#1534733751
ID: 88081542
HD
216
.035
1966-1970

Director's Decisions for California

Oil & Gas

1966-1970

Historic, archived document
Do not assume content reflects current scientific knowledge, polices, or practices.

BLM Library
Denver Federal Center
Bldg. 85, OC-521
P.O. Box 25047
Denver, CO 80225

Historic, archived document.

Do not assume content reflects current scientific knowledge, polices, or practices.

DOCKET FILES

Oil and Gas Leases: Applications-Noncompetitive 3123

Oil and gas lease offers are properly rejected without priority where the entry card offers contain the names of other parties in interest in the offers but the required showing under 43 CFR 3123.2(c)(3) is not furnished with the offers nor within 15 days from submission of the offers, and where the offeror explains thereafter, on appeal, that he is in fact the sole party in interest in the offers.

Lino F. Biagiotti, Sacramento 079153 etc. (January 27, 1966)

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 FEB 16 AM 10 00

In reply refer to:
704
Sacramento 079153
079166

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 FEB 16 AM 10 00

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

January 27, 1966

Certified Mail
Return Receipt Requested

DECISION

Lino F. Biagiotti	:	Oil and Gas
	:	
	Decision Affirmed	

Mr. Lino F. Biagiotti has appealed from the decision of December 17, 1964, of the Sacramento land office, rejecting his above-identified oil and gas lease offers which were drawn at a public drawing of simultaneously-filed oil and gas drawing entry cards. The cards were signed by Mr. Biagiotti as offeror and the names of several individuals were printed on the reverse side of the cards as other parties in interest. No separate statements were furnished as to any agreements between the parties, nor of the qualifications of the additional individuals named to take and hold the interests sought, and the land office decision held that the lease offers were therefore defective and not entitled to any priority of filing time. 43 CFR 3123.2(c)(3).

On appeal Mr. Biagiotti states that he did not understand the meaning of the reference on the reverse side of the card concerning "Other Parties in Interest." He states that he construed this to mean he was to supply the names of persons as references, as would be required of an applicant for a credit rating. He states that he listed the names of several of his relatives for this reason only. He asserts that none of the named individuals is an interested party in the lease offer itself.

In signing the drawing entry card offers here concerned, the applicant certified in item 3 thereof, "that the applicant is the sole party in interest in this offer and the lease if issued, or if not the sole party in interest, that the names and addresses of all other interested parties are set forth on the reverse hereof." The names here concerned were printed on the reverse side of the cards under the caption, "Other Parties in Interest." With respect to this item the card contains the following notation: "Compliance must be made with the provisions of 43 CFR 3123.2." Thus the card clearly provides for submission of the showing regarding other parties in interest as specified in 43 CFR 3123.2(c)(3), either at the time of filing of the drawing entry card or within 15 days thereafter to preserve the priority of filing time of the lease offer.

Since the necessary explanation in these cases was not filed until after the 15-day period allowed therefor had expired, the land office properly rejected the offers without priority. Cf. Gerald Breslauer, A-29129 (January 10, 1963); Charles J. Babington, A-30064 (March 5, 1965).

The decision appealed from is affirmed.

Mr. Lino F. Biagiotti is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the filing fee will be $5 for each offer included in the appeal, that is, $10 if both offers are included in the appeal. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed, the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures

DISTRIBUTION:

Mr. Lino F. Biagiotti (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M PM (2)
Geological Survey, Conservation Division (3)
Gower Federal Service
OPD
Appeals List No. 1
WET

appeal to Sec
affirmed
A-30629 11-16-66

DOCKET FILES

Oil and Gas Leases: Noncompetitive Leases 3123

A proposed withdrawal of an oil and gas lease offer was properly held to be unauthorized where it was received March 31, 1965, and the lease offeror was determined to be the successful drawee for the lands applied for in a public drawing held on March 24, 1965.

Duncan Miller, Sacramento 079417 (April 14, 1966)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 APR 25 AM 10 00
③

In reply refer to:
704
Sacramento 079417

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

April 14, 1966

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas

Decision Affirmed

Mr. Duncan Miller has appealed from the April 8, 1965 decision of the Sacramento land office, holding that the proposed withdrawal of his oil and gas lease offer was not permissible since it was received March 31, 1965, whereas he was determined to be the successful drawee for the lands applied for in the public drawing of simultaneously-filed lease offers held on March 24, 1965. The land office decision noted regulation 43 CFR 3123.9(c)(3), providing, in pertinent part:

> Upon determination of the successful drawee for a particular leasing unit, the first year's rental will not be returnable and will be earned and deposited in the United States Treasury upon execution of the lease in behalf of the United States. However, if an applicant withdraws his entry card prior to the drawing or if his offer to lease is rejected, the advance rental will be returned to him . . . .

The lease was executed on behalf of the United States on April 8, effective as of May 1, 1965.

The appellant contends, in substance, that the regulation is not clear in its intent and is not spelled out on the drawing entry card and that his withdrawal should be accepted since it was filed before the lease was executed on behalf of the United States.

Regulation 43 CFR 3123.9(c) clearly provides, in part, that "By signing and submitting the entry card, the applicant agrees that he will be bound to a lease . . . if . . . issued to him as a result of the drawing." In substance this agreement is also set out on the obverse of the offeror's entry card. Its terms are clear and explicit. In signing the entry card, the offeror agrees and is chargeable with actual knowledge that, if he is successful, he will be bound to a lease if a lease is issued to him. This is also implicit in subsection (3) of 43 CFR 3123.9(c) which provides that when the successful drawee is determined the first year's rental will be earned upon execution of the lease in behalf of the United States.

The decision of the land office is affirmed.

Mr. Duncan Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures

DISTRIBUTION

Mr. Duncan Miller (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Geological Survey, Conservation Division (3)
Gower Federal Service
Appeals List No. 1
WET

DOCKET FILES

Oil and Gas Leases: Applications--Noncompetitive 3123.1

An oil and gas lease offer is properly rejected where it describes less than 640 acres and does not come within the exceptions set forth in 43 CFR 3123.1(d).

Duncan Miller, Sacramento 078253 (April 22, 1966)

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 MAY 6 PM 2 49

In reply refer to:
704
Sacramento 078253

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

April 22, 1966

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas

Decision Affirmed

Mr. Duncan Miller has appealed from the Sacramento land office decision of December 7, 1964, which rejected the above-identified lease offer because the offer described less than 640 acres of available land and the land was not isolated or otherwise within the exceptions provided in 43 CFR 192.42(d) (now 43 CFR 3123.1(d)).

In the appeal it is contended that since the offer was being considered for reinstatement after amendment of the regulations governing simultaneous filings, the offer should be considered under the regulations as they now read.

The record shows that the NE¼SE¼ sec. 20, NE¼SE¼ sec. 29, T. 32 S., R. 20 E., M.D.M., California, were posted on the list of lands available for leasing in the March 1964 list of the Sacramento land office (43 CFR 192.43). The land in sec. 20 was indicated as not being within the exceptions to the 640-acre rule contained in 43 CFR 192.42(d). Miller's offer described only the 80 acres shown on the posted list. As the result of the drawing to determine the priority of consideration, lease offer Sacramento 078244 was given first priority. All other offers, including that of Miller, for the lands in T. 32 S., R. 20 E., were conditionally rejected by decisions of April 2, 1964 and the payments of advance rental were returned. Lease Sacramento 078244 was issued effective June 1, 1964 for the NE¼SE¼ sec. 29, T. 32 S., R. 20 E., M.D.M., but the lease offer was rejected as to NE¼SE¼ sec. 20, same township, because of noncompliance with the requirements of regulation 43 CFR 192.42(d).

At the time the list was posted and the simultaneously-filed lease offers were received in the land office, the SE¼NE¼ and SE¼SE¼ sec. 20, contiguous to the posted NE¼SE¼ sec. 20, were available for leasing under the Mineral Leasing Act.[1]

---

[1] These lands had been posted as available for leasing in the list for February 1964, and were under lease offer at the time the March 1964 filings were received. Leases for these contiguous lands were issued effective June 1, 1964.

The other offers for the posted land in sec. 20 were reinstated in the order of the priority of consideration established in the drawing. Each one having a higher priority than that of Miller's offer Sacramento 078253 was rejected finally because it did not comply with the 640 acre minimum requirement, and because the land in sec. 29 had been included in the lease issued to the offeror who obtained the first priority. When the lease offer of Mr. Miller was reached, it likewise was found not to comply with the 640-acre minimum and it was rejected by the decision presently under appeal.

The regulation 43 CFR 192.43 governing the simultaneously-filed lease offers in March 1964 provided that each offer must conform with the acreage requirement of 43 CFR 192.42(d), which stated, in essence, that no offer may be made for less than 640 acres except where the land is surrounded by lands not available for leasing under the act or is in an approved unit plan of operation. The clear intent of this regulation (43 CFR 192.42(d)) is that an offeror is to be excused from having to include 640 acres in his offer only when the land applied for is surrounded by land not available for noncompetitive leasing. The fact that public land is covered by an outstanding lease offer does not render it not available for leasing within the meaning of this regulation. R. S. Prows, 66 I.D. 19 (1959).

As Miller's lease offer did not describe all land available for leasing nor come within the exceptions set forth in the regulation, its rejection by the land office was proper. The decision appealed from is affirmed.

The request of the appellant for consideration of his lease offer under the principles of the simultaneous-filing regulation as it now reads must be denied. The provision that simultaneous lease offers may be accepted for posted lands that do not satisfy the requirement for 640 acres is applicable only to those simultaneous filings made subsequent to the effective date of the amendment, or since April 14, 1964. 43 CFR 3123.9(b), Circular 2135, 29 F.R. 2502, February 15, 1964.

Mr. Duncan Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The amount of the filing will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures

DISTRIBUTION

Duncan Miller (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Geological Survey, Conservation Division (3)
Gower Federal Service
Appeals List No. 1
DEH

appeal to Sec.
Rev. & Remanded
A-30644
2-1-67

DOCKET FILES

Oil and Gas Leases: Applications - Noncompetitive 3123.1

Oil and gas lease offers for the same lands posted for simultaneous filing, submitted by the two persons who are president and vice-president, respectively, and the sole stockholders of a corporation, each purportedly in his own behalf individually, were properly rejected for noncompliance with the requirement for disclosure of the corporation as a party in interest in view of the existing fiduciary relationship at the time the offers were filed between the offerors and their wholly-owned corporation, and in the absence of evidence from the corporation disclaiming any interest in the offers, present or prospective, as defined in 43 CFR 3100.0-5. A lease issued pursuant to such an offer was erroneously issued, and it was properly cancelled.

Raymond J. Stipek, et al., Riverside 02767 etc. (April 26, 1966)

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 MAY 6 PM 2 49 (3)

In reply refer to:
704
Riverside 02767
03248
04759
05040

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

April 26, 1966

Certified Mail
Return Receipt Requested

DECISION

Raymond J. Stipek :
R. A. Keans : Oil and Gas
Keans, Springmann and Stipek, Inc. :

Decisions Affirmed

By decision of September 25, 1964, the Riverside district and land office rejected oil and gas lease offer Riverside 05040 of Raymond J. Stipek, a simultaneous filing received April 27, 1964, for the SE¼NE¼ sec. 28, T. 4 N., R. 24 W., S.B.M. (Parcel 52-2). By decision of September 28, 1964, the district and land office cancelled oil and gas lease Riverside 02767, issued February 1, 1964, to Raymond J. Stipek for the S½NE¼SE¼ sec. 29, T. 4 N., R. 24 W., S.B.M., in response to a simultaneously-filed lease offer received March 25, 1963, for lands posted on List No. 39. This decision also rejected lease offer Riverside 04759 for the SE¼SW¼ sec. 27, T. 4 N., R. 24 W., S.B.M. (segregated from the original simultaneous offer Riverside 02767). By decision of October 15, 1964, the district and land office rejected lease offer Riverside 03248 of R. A. Keans, a simultaneous filing received May 27, 1963 for 164.79 acres of acquired lands described by metes and bounds in T. 3 S., R. 7 W., S.B.M. (Parcel 41-156).

The actions by the district and land office against the lease and the offers were based on the conclusion that the sole party in interest statement on each offer could not be accepted as compliance with the pertinent regulation, 43 CFR 192.42(e)(3)(iii), now numbered 43 CFR 3123.2(c)(3).

Two of the decisions recited that Messrs. Stipek and Keans each had filed an identical lease offer for each of the described parcels in the lists of land posted for simultaneous filing, and each had stated that he was the sole party in interest in the offer and lease, if issued, but that Messrs. Stipek and Keans each owned 50% of the stock in Keans, Springmann and Stipek, Incorporated, and that they were president and vice-president, respectively, of the company. Under the ruling in McKay v. Wahlenmaier (226 F.2d 35 (1955)), that officers of a corporation entrusted with its management are in a fiduciary relationship with the corporation, Messrs. Stipek and Keans were considered not to be the sole parties in interest in their subject lease offers, but, rather that the corporation was also a party in interest, undisclosed, in each lease offer, within the meaning of the cited regulation. The other decision, in addition, held that because Messrs. Stipek and Keans were officers in the corporation, under the fiduciary relationship which existed, the duplicate filings gave the corporation two chances in the drawings instead of only one, which Departmental policy directs. From these decisions both Messrs. Stipek and Keans have appealed individually.

The appellants deny that they were disqualified as offerors for lease on the ground that they had more than one chance to be successful in the drawings. They contend that each offeror was in fact the sole party in interest in his offers, and that such statement in each offer was true and accurate. They contend further that the administrative cancellation of lease Riverside 02767 was unauthorized, and that the offers should not have been rejected in the absence of other offerors who had maintained their rights. The appellants acknowledge that they were the officers and sole stockholders in Keans, Springmann and Stipek, Inc., at the time the offers were filed, but they contend that there was no assertion in the decisions that they had violated any fiduciary obligations to the corporation, and the decisions did not recite any facts from which such a conclusion could be drawn. They attempt to equate their actions to those of disparate individuals who are in no wise associated together.

The record shows that both appellants filed lease offers for the same parcels of land open to simultaneous filing during March and May, 1963, and April 1964, each purportedly in his own behalf. Each lease offer or drawing entry card recited that the offeror was the sole party in interest.

Careful and due consideration has been given to the information set forth in the appeals as well as to that in the record. It appears that neither Mr. Stipek nor Mr. Keans could escape from the fiduciary relationship which each bore to Keans, Springmann and Stipek, Inc., as principal officers and sole stockholders. Within the definition of "interest" in the oil and gas leasing regulations the company was thus properly considered to have an interest in any lease offer submitted by either Mr. Stipek or by Mr. Keans. The regulation, 43 CFR 3100.0-5, reads in pertinent part:

> A sole party in interest in a lease or offer to lease is a party who is and will be vested with all legal and equitable rights under the lease. . . . An "interest" in the lease includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed, is deemed to constitute an "interest" in such lease.

Inasmuch as the long-standing policy of the Department dictates that offerors and other parties having an interest are limited to an interest in a single simultaneously-filed lease offer for the same land, the filing of the duplicate competing lease offers in this case by the two officers who are the sole stockholders of the corporation is deemed to have violated this Departmental policy of equal opportunity and fair play. 1/ The lease offers were therefore properly held to be disqualified from obtaining any priority in the drawings.

The subject lease offers were also correctly held to be disqualified for failure to comply with the regulation 43 CFR 3123.2(c)(3) relating to the submission of a statement of interest from every entity which has an interest or prospective interest in the lease offer. There is no showing in the record by the corporation disclaiming any interest in the lease offers here concerned. Further, no express authorization is found in its articles of incorporation for the appellants to take and hold oil and gas leases individually and apart from the corporation.

The contentions of the appellant that the oil and gas lease Riverside 02767 may not be cancelled nor may the lease offers be rejected in the absence of other offerors who have maintained their rights is without merit. The lease was properly cancelled because it was erroneously issued pursuant to a lease offer which had not earned priority because of violation of the regulations as above discussed. The Secretary has authority to cancel any lease erroneously issued, whether or not there is a proceeding timely instituted by a competing applicant. See W. H. Bird, et al., 72 I.D. 287 (1965). As noted above, the lease offers were not entitled to priority.

The decisions appealed from are affirmed.

Messrs. Raymond J. Stipek and R. A. Keans are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C., 20240. The filing fee will be computed on the basis of $5 for each lease and lease offer included in the appeal. If an appeal covers all offers and the lease adversely affected by this decision, the total filing fee will be $20. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures

1/ In fact, the filing of the lease offers for the same lands by Messrs. Stipek and Keans would appear to be collusive within the meaning of 43 CFR 3123.3(a) (formerly 43 CFR 192.43b, Circular 2128, 29 F.R. 1437 (January 29, 1964).

DISTRIBUTION
Krystal and Paradise, Attorneys for Appellants (Certified Mail)
Raymond J. Stipek
R. A. Keans
Keans, Springmann and Stipek, Inc.
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Geological Survey, Conservation Division (12)
Gower Federal Service
Appeals List No. 1
DEH

DOCKET CLERK
FILES

008

Appeals Procedure: Dismissal 1840.07

An appeal will be dismissed where no reasons have been stated alleging error in the decision from which the appeal is taken.

Albert Stevenson, Riverside 06364 (May 6, 1966)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 MAY 31 AM 10 00
③

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In Reply Refer to:
704
Riverside 06364

May 6, 1966

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Albert Stevenson : Oil and Gas

Appeal Dismissed

Mr. Albert Stevenson has appealed from a decision of the Riverside district and land office dated February 24, 1965, which rejected the above-identified lease offer for failure to comply with the regulatory requirements of 43 CFR 3212.1(a) as to filing a map showing desired lands and as to giving name of project in which lands are situated.

In his letter of March 1, 1965, styled "Notice of Appeal," Mr. Stevenson did not point out any reason for appeal nor where the decision was in error, as required by the appeals procedure. He merely used the letter as a vehicle to submit evidence, including a map of the land sought, to cure the defects in the lease offer noted by the decision.

In view thereof the appeal is dismissed. Duncan Miller, 65 I.D. 290 (1958); 43 CFR 1840.0-7.

It was proper for the district and land office, in its decision, to call for additional evidence specified in the cited regulation. The showing by the offeror is deemed adequate to correct the deficiencies of the lease offer noted in the decision. However, the record, including the map showing the location of the lands sought, shows that the lands applied for are within the city limits of the City of Long Beach, California. Section 3 of the Mineral Leasing Act for Acquired lands (30 U.S.C. § 352) provides, inter alia, that acquired lands which are situated within incorporated cities, towns and villages are excluded from the operation of the Act. The words of the statute are clear and unambiguous. Deposits of oil and gas in acquired lands situated within incorporated cities are excluded from the operation of the Act. It having been found that the lands sought in this lease offer are located within the corporate limits of Long Beach, California, it follows that these lands cannot be leased under the Mineral Leasing Act for Acquired Lands, supra. See Duncan Miller, A-29897 (November 13, 1963) and cases cited therein. The subject lease offer must remain rejected.

The offeror submitted evidence that the acquired lands sought are under jurisdiction of the Navy Department. The record does not show clearly whether the lands are set apart for naval purposes. If so, showever, they are not subject to leasing under the Act for such reason also (30 U.S.C. § 352; 43 CFR 3211.1(f)).

Mr. Albert Stevenson is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed, the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Frances A. Patton

Acting Chief, Office of Appeals and Hearings

Enclosures

DISTRIBUTION:

Mr. Albert Stevenson (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Geological Survey, Division of Conservation (3)
Gower Federal Service
Appeals List No. 1
DEH

appeal to Sec.
dismissed A-30672
8-16-66

DOCKET FILES

Oil and Gas Leases: Applications -- Noncompetitive 3123

It is proper to reject a lease offer for land which is not public domain land of the United States.

It is proper to reject a lease offer for land within the limits of an incorporated city.

Dynamic Industries Company, Riverside 06133 (May 9, 1966)

In reply refer to:
704
Riverside 06133

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

May 9, 1966

Certified Mail
Return Receipt Requested

DECISION

Dynamic Industries Company : Oil and Gas

Decision Affirmed

Dynamic Industries Company has appealed from the Riverside district and land office decision of January 26, 1965, which rejected the above-identified lease offer for the reasons that (1) the land sought is not public domain (43 CFR 3100.0-2), (2) the land is within the corporate limits of the City of Long Beach, California (43 CFR 3100.1), and (3) there was noncompliance with 43 CFR 3123.2(g) which requires a showing of the citizenship and acreage holdings of the stockholders of the company holding more than 10% of the stock. The decision also stated that the area sought would be unavailable for the filing of noncompetitive lease offers if it is within the known geologic structure of the East Wilmington Oil Field (43 CFR 3122.1(a)).

The appellant contends that the land is public domain, never having been conveyed from the United States to any private party and that it is not within the corporate limits of Long Beach as the United States has never consented to incorporation of the land. The appellant also declares that the land had never been determined to be within the known geologic structure of any producing oil or gas field. With the appeal, the offeror submitted the required showing under 43 CFR 3123.2(g).

The contention of the appellant that the land is public domain pursuant to the Act of March 3, 1851 (9 Stat. 631) and has never been conveyed from the United States to any private party is not well taken. It is an historical fact that the State of California is composed of territory formerly belonging to Mexico and acquired by the United States under the Treaty of Guadalupe Hidalgo (February 2, 1848), and by Act of Congress approved September 9, 1850 (9 Stat. 452) was admitted as a State into the Union. The boundary line of the State of California goes westerly along its southern limit to the Pacific Ocean and extends therein 3 English miles, and runs thence northwesterly following the Pacific Coast to the 42° North latitude. It has been repeatedly held by the Courts and by this Department that upon admission of a State in the Union, the State acquires, by virtue of its inherent sovereignty, absolute title to all tidelands on its borders. James Kasson, 13 L.D. 299 (1891). See also Knight v. United States Land Association, 142 U.S. 183. Pursuant to the Act of March 3, 1851, supra, titled "An Act to ascertain and settle the private land claims in the State of California," a Commission was established to carry out the purposes of the Act. For private land claims finally confirmed by the Commission, and pursuant to its findings, patents were issued transferring title from the United States (and affirming the antecedent title from Mexico) for such private land claims. Such a patent was issued December 7, 1867 for the Los Cerritos Grant. In pertinent part, the metes and bounds description in the patent reads as follows:

> Thence S. 76° 30' E. crossing a low beach 10 chains to station at a perpendicular bluff at the line of ordinary high water mark;
>
> Thence along edge of said bluff,
>
> S. 88° 15' E. 26 chains
>
> S. 83° E. 17 chains
>
> N. 84° 45' E. 4 chains
>
> S. 84° E. 13 chains
>
> S. 81° 30' E. 24 chains to the southeast corner of Los Cerritos Grant and southwest corner of Rancho Los Alamos. (emphasis supplied)

It is obvious that the area encompassed in the patent for the Los Cerritos Grant extended along the line of the ordinary high water mark of the Pacific Ocean in the cited calls, which are the identical calls used in the description in the subject lease offer. As the upland abutting on the Pacific Ocean was included in the patent issued for Los Cerritos Grant and the facing tidelands are under the sovereignty and jurisdiction of the State of California (if they are not subject to the rights of Los Cerritos Grant under riparian law), none of the lands described in the lease offer are public domain lands subject to leasing under the Mineral Leasing Act. Accordingly, it was proper for the district and land office to reject the subject lease offer, and that decision is affirmed.

It is not necessary to discuss the situation of the described land being now within the limits of the incorporated City of Long Beach and the argument of the appellant that the land is not so situated. It is only observed that the land description in the lease offer commences "A parcel of land located within the corporate limits of the City of Long Beach, California", and is accompanied by a metes and bounds description which follows, in part, certain streets of the City of Long Beach. The Mineral Leasing Act does not apply to lands situated in incorporated cities (30 U.S.C. § 181).

It was not proper for the district and land office to advert to the possible determination of inclusion of the land in a known geologic structure without obtaining a positive statement on this point from the Director of the Geological Survey.

Dynamic Industries Company is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal, there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence wherein the decision appealed from is in error.

Frances A. Patton

Acting Chief
Office of Appeals and Hearings

Enclosures

DISTRIBUTION

Loeb and Loeb, Attorneys for Appellant (Certified Mail)
Dynamic Industries Company
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Geological Survey, Conservation Division (3)
Gower Federal Service
Appeals List No. 1
DEH

DOCKET FILES

Oil and Gas Leases: Applications--Noncompetitive 3123.1

An oil and gas lease offer which includes less than 640 acres is properly rejected as in violation of the Department's regulation 43 CFR 3123.1(d) requiring that an offer be for not less than 640 acres.

Oil and Gas Leases: Patented or Entered Lands--Generally

The entryman or patentee under a stock raising homestead entry is not entitled to a preference right under section 20 of the Mineral Leasing Act.

Raymond J. Briese, Riverside 06877 (June 3, 1966)

In reply refer to:
704
Riverside 06877

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

June 3, 1966

Certified Mail
Return Receipt Requested

DECISION

Raymond J. Briese : Oil and Gas

Decision Affirmed

Mr. Raymond J. Briese has appealed from a decision of the Riverside district and land office dated July 27, 1965, which rejected the above-identified lease offer pursuant to 43 CFR 3123.3(b) because the offer did not include 640 acres of lands available for oil and gas leasing and did not come within any of the exceptions set forth in 43 CFR 3123.1(d).

In his appeal, Mr. Briese does not show any error in the land office action, but contends generally that he is entitled to an oil and gas lease by virtue of his ownership of the surface of the lands sought in the lease offer.

The record shows that the N½SE¼ section 6, T. 4 N., R. 14 W., S.B.M., described in the lease offer, was patented April 8, 1927, in response to an entry made under the Stock-Raising Act of December 29, 1916 (43 U.S.C. §§ 291-301). The record also shows that lands contiguous to the said N½SE¼ section 6 were available for oil and gas leasing at the time the subject lease offer was filed.

In pertinent part, the regulation (43 CFR 3123.1(d)) provides that no lease offer may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation or such a plan which has been approved by the Director of the Geological Survey, or where the land is surrounded by lands not available for leasing under the act. An oil and gas lease offer which includes less than 640 acres is properly rejected as in violation of the Department's regulation requiring that an offer be for not less than 640 acres. Duncan Miller, A-28767 (July 23, 1962).

Furthermore, the contention of the appellant that he should be granted an oil and gas lease because he is owner of the surface rights is without merit. As above noted, the land is embraced in a stock-raising homestead patent which excepted and reserved to the United States all of the coal and other minerals in the lands, together with the right to prospect for, mine and remove the same pursuant to the provisions and limitations of the Stock-Raising Homestead Act. The Department has held that because of this statutory reservation, lands patented under the Stock-Raising Homestead Act are regarded as having been "withdrawn or classified as mineral at the time of entry" and accordingly, an entryman or patentee of the surface title to land under that Act does not have a preference right to lease under Section 20 of the Mineral Leasing Act (30 U.S.C. § 229).

The decision appealed from is affirmed.

Mr. Raymond J. Briese is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION

Mr. Raymond J. Briese (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Geological Survey, Conservation Division (3)
Gower Federal Service
Appeals List No. 1
DEH

③

DOCKET FILES

Oil and Gas Leases: Applications--Noncompetitive 3123.1

It is proper to reject an oil and gas lease offer without priority when the offer is not accompanied by the required statements of interest of the parties and the showing of qualifications of the additional party named, and where such showing is not filed within the fifteen-day period allowed by regulation 43 CFR 3123.2(c)(3).

Mrs. Mary V. Wagner, Riverside 07064 (June 16, 1966)

In reply refer to:
704
Riverside 07064

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D. C. 20240

June 16, 1966

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Mary V. Wagner : Oil and Gas
:
:
Decision Affirmed

Mrs. Mary V. Wagner has appealed from a decision of the Riverside district and land office, dated October 12, 1965, which rejected the above-identified lease offer filed September 24, 1965 for Parcel 69-8. The offer was rejected because it indicated Gerard C. Wagner to be a party in interest in the offer and lease, if issued, but the offer was not accompanied by nor was there filed within 15 days after filing of the lease offer a separate statement signed by the interested party and the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them, if oral, and a copy of the agreement, if written, and evidence of Gerard C. Wagner's qualifications to hold such lease interest, as required by 43 CFR 3123.2(c)(3).

The appellant does not refute the holding of the land office, but contends that it was her intention to obtain a lease in her own name through use of her own money. She avers that her husband handles investment of her money for her benefit, and so inserted his name on the offer form only as being interested in the disposition of the funds required for the lease. She requests the lease to be issued to her as successful drawee.

Whatever reasons the appellant may now adduce, the land office was confined to being advised by the statements of the offeror in her offer. If error was committed by her in preparation of the offer, the Department can acknowledge a correction of her error but it cannot correct it retroactively to the detriment of others. When the appellant filed her offer, she stated that her husband was also a party in interest. Therefore, the land office correctly ruled that the required statements were not filed in time, and properly rejected the offer. Timothy G. Lowry, A-30487 (March 16, 1966).

Further, it is clear from the regulation 43 CFR 3123.9(c)(3) that an offeror acquires no vested right to a lease merely because his offer is drawn in the simultaneous filing drawing procedure. The drawing simply establishes which offer will be considered; it does not constitute a determination that the offer so drawn is valid or that any defect in such offer may be waived. A defective offer drawing priority must be rejected. George N. Keyston, Jr., Ltd., 70 I.D. 156 (1963). A lease offer initiates only an inchoate right to a lease; it is not a vested right. The offer must be valid and complete if a lease is to be issued, i.e., it must meet all mandatory regulatory requirements, including the requirement for a timely showing that the parties in interest in the offer and lease, if issued, are qualified under the law to take and hold the lease sought.

The decision appealed from is affirmed.

Mrs. Mary V. Wagner is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed, the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Frances A. Patton
Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures

DISTRIBUTION:
Mrs. Mary V. Wagner (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Geological Survey, Conservation Division (3)
Gower Federal Service
Appeals List No. 1
DEH

appeal to Sec.
affirmed A-30700 5-25-67

DOCKET FILES

Oil and Gas Leases: Applications--Noncompetitive 3123

It is proper to reject an oil and gas lease offer filed for land in an outstanding lease.

Harold H. Sternberg, Riverside 07312 (July 13, 1966)

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 JUL 25 AM 11 00

3

In reply refer to:
704
Riverside 07312

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

July 13, 1966

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Harold H. Sternberg : Oil and Gas
:

Decision Affirmed

Mr. Harold H. Sternberg has appealed from a decision of our Riverside district and land office dated December 27, 1965, which rejected the above-identified lease offer for the NE¼ section 22, T. 13 S., R. 12 E., S.B.M., California, because the land is embraced in oil and gas lease LA 0166750, issued February 1, 1964 to Harold L. Rowland, and transferred by assignment to the Standard Oil Company of California.

In his appeal, Mr. Sternberg contends that rejection of his lease offer was incorrect because, under 30 U.S.C. § 229, he is entitled to a preference right to an oil and gas lease on the said NE¼ section 22, as the record title holder, through assignment, of desert land entry LA 039291 (formerly LA 023249, El Centro 01934), which entry was allowed April 9, 1914 for the subject lands (and others not here pertinent), and he was not served with notice of his preference right to a lease by the offeror of lease offer LA 0166750 as required by 43 CFR 3120.4. He further contends that the land office erred in misdirecting communications addressed to him.

Standard Oil Company of California filed an answer to the appeal maintaining that Mr. Sternberg was not entitled to a preference right to a lease because his acquisition of title to the desert land entry was not made prior to January 1, 1918 as required by 43 CFR 3120.4.

The record discloses that desert land entry LA 023249 was allowed originally April 9, 1914 to Henry H. Markham for NE¼ section 22, NW¼ section 23, T. 13 S., R. 12 E., S.B.M. Through modification of land district boundaries, the serial identification of the entry was changed to El Centro 01934 and then to LA 039291. On September 27, 1952 an assignment of the entry, in toto, from the heirs of Henry H. Markham to Jerome David Brown was approved. Mr. Brown, in an assignment approved June 22, 1955, conveyed that part of the entry in the NE¼ section 22 to Harold H. Sternberg.

The record further shows that on February 19, 1960, Harold L. Rowland submitted lease offer LA 0166750 for the said NE¼ section 22, within the desert land entry held by Mr. Sternberg, and for other lands not germane to this appeal. As the desert land entry had been allowed without reservation of oil and gas to the United States, the land office requested the Geological Survey to report on the current mineral status of the land in the desert land entry, for which the lease offer had been filed. In its report of August 30, 1961, the Geological Survey classified the land in the desert land entry to have prospective value for oil and gas within the intent to 43 CFR 192.71 (now 43 CFR 3120.5). Notice of this mineral classification was transmitted by the land office to Mr. Sternberg in an instrument dated January 29, 1963, which called upon Mr. Sternberg to sign a consent to have his desert land entry LA 039291 made subject to the conditions and limitations of the Act of July 17, 1914, as amended (30 U.S.C. § 121-123), or to apply for reclassification of the land as provided for in 43 CFR 192.71. This notice was sent by certified mail to Mr. Sternberg at his address of record in the desert land entry case file, 1576 West Grand Avenue, Pomona, California, but was returned undelivered by the Post Office, with the advice "Moved, left no address." Compatible with the regulation, 43 CFR 101.19 (now 43 CFR 1810.2), the land office considered service of the notice to have been had, and in due course, on February 13, 1963, impressed the desert land entry papers with notice that the entry was subject to reservation of the oil and gas to the United States, subject to the conditions and limitations in the Act of July 17, 1914, supra. Subsequently, the land office required Mr. Rowland to serve notice of his lease offer LA 0166750 on Mr. Sternberg, attributing a preference right to lease to Mr. Sternberg as holder of the desert land entry. The notice from Mr. Rowland was sent to the same address for Mr. Sternberg, and similarly was returned by the Post Office. Again the land office considered the regulation governing service to have been satisfied. In due course, the land office issued oil and gas lease LA 0166750, effective February 1, 1964, and at the same time, approved assignment of the lease from Mr. Rowland to the Standard Oil Company of California. [1] The lease offer from Mr. Sternberg was received December 8, 1965.

Regulation 43 CFR 3120.4(a) restates the law. Although the desert land entry was allowed in 1914 and the title of Mr. Sternberg to it originated on the date of approval of the assignment, June 22, 1955, the land office correctly held that Mr. Sternberg was entitled to a preference right to a lease for oil and gas notwithstanding that the assignment was made subsequent to January 1, 1918. Alexander Fraser and Carl Harvey, 48 L.D. 237 (1921), rehearing denied, 48 L.D. 239 (1921).

Mr. Sternberg's contention that he was not properly served with notice of the proposed oil and gas lease LA 0166750 is answered by the evidence of constructive service of the notice submitted by the offeror Rowland. Under the Department's regulations governing service of documents, service by registered or certified mail may be proved by showing that the document required to be served could not be delivered to the addressee at his record address because of various reasons and, where such constructive service is relied upon, a document will be considered to have been served at the time of the return by the post office of the undelivered registered or certified letter. 43 CFR 1840.0-6(e)(2); United States v. Asbestos Development Corporation, 73 I.D. 82 (March 26, 1966).

---

[1] The assignment had been filed February 15, 1963.

The contention by Mr. Sternberg that the land office did not correctly address written communications to him is without merit. His desert land entry file does not reflect any notice of change of address for Mr. Sternberg from the original address shown on his affidavit of assignee, nor any statement that he was represented by counsel upon whom service of notice might be had.

Nonaction on the part of Mr. Sternberg to whom was accorded a preference right to an oil and gas lease by section 20 of the Mineral Leasing Act, supra, after constructive service of notice upon him by the lease applicant in accordance with the departmental regulation issued pursuant to that Act creates a constructive waiver of the preference right which estops him from ever thereafter asserting the right. Shaw v. Rich, 50 L.D. 405 (1924).

The rights of Mr. Sternberg to apply to disprove the mineral classification of the land in his desert land entry are set forth in 43 CFR 2023.4-3(c)(1).

For the reasons set forth above, the land office decision appealed from is affirmed.

Mr. Harold H. Sternberg is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error. If an appeal is taken, the adverse party to be served is the Standard Oil Company of California, 225 Bush Street, San Francisco, California 94120.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures

DISTRIBUTION
Young, Henrie, & McCarthy, Attorneys for Appellant (Certified Mail)
Mr. Harold H. Sternberg
Standard Oil Co. of California
Mr. Harold L. Rowland
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Geological Survey, Conservation Division (3)
Gower Federal Service
Appeals List No. 1
DEH

appeal to Sec
affirmed as modified A-30712 11-25-66

DOCKET FILES

Oil and Gas Leases: Generally 3120

The Mineral Leasing Act Revision of 1960 authorizing the leasing of bituminous sands does not diminish the rights of lessees under oil and gas leases issued before or after the date of that Act. The existence of the statute and regulations issued pursuant thereto does not provide a basis for finding of a breach of contract by the lessor of oil and gas leases, nor for waiver of rentals or other relief.

Duncan Miller, Sacramento 062644 etc. (July 13, 1966)

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 JUL 25 AM 11 00

In reply refer to:
704
Sacramento 062644
062976

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

July 13, 1966

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Duncan Miller : Oil and Gas
:
Decision Affirmed

Mr. Duncan Miller has appealed from the July 22, 1965 letter-decision of the Sacramento land office, which stated that the above-identified oil and gas leases confer upon the lessee the right to remove oil or gas by no method other than recognized drilling operations. The letter was written in response to the appellant's letter of June 29, 1965, in which he contended he has the right to extract oil from his leases in any manner including extraction from "so-called asphalt or bitumen" deposits.

The appellant contends that the ruling constitutes a violation of the lease contract rights. He, therefore, requests a waiver of rental and equitable relief. In addition, he states it should be noted that in the San Ardo area the specific activity is being done which involves the subject of the controversy. Mr. Miller also made request for extensions of the lease terms and remitted a filing fee of $10 for each such request.

The issues which Mr. Miller asserts in these appeals relating to abridgement of his contractual rights are similar to those which he earlier raised and which the Bureau considered in Duncan Miller, New Mexico 0235808 etc. (August 10, 1965), Duncan Miller, Utah 010605(A) etc. (October 7, 1965), Duncan Miller, Utah 096761 etc. (January 13, 1966), and Duncan Miller, Anchorage 029086 etc. (May 25, 1966).

Here, as in the earlier cases, it is considered that there has been no violation of any contractual obligations of the lessor to Mr. Miller. After careful examination of both case files here involved, we can find nothing which shows any action of the lessor which can be construed as limiting the extent of the rights of the lessee under the oil and gas leases as issued.

The United States has done nothing with respect to native asphalt, solid or semisolid bitumen, and bituminous rock (including oil impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried) which diminishes the rights of an oil or gas lessee. In a memorandum dated February 24, 1965, to the Assistant Secretary, Public Land Management, the Associate Solicitor for Public Lands, stated:

> The Mineral Leasing Act Revision of 1960 nowhere appears to have been intended to diminish the rights of oil and gas lessees. It could not

> diminish the rights of lessees under leases issued prior to September 2, 1960, and the Revision does not indicate an intention to make the rights of subsequent lessees any less.
>
> Section 1 of the standard oil and gas lease form gives the lessee "the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and gas deposits. . ." in specified lands. Although the other provisions of the lease are written in terms of production by drilling rather than production by mining, the explicit language of Section 1 clearly states that the privilege of mining the oil and gas deposits in the described land accrues to the oil and gas lessee, and thus that privilege may not, where an oil and gas lease is in existence, be granted to any other lessee, such as a tar sands lessee. However, this does not mean that the oil and gas lessee has the privilege of mining all hydrocarbons in the leased lands. The lease must be read in conjunction with the applicable statute and regulations. Under the definitions in the regulations only liquid and gaseous hydrocarbons would be included in the oil and gas deposits leased under the oil and gas lease. Whether it would be possible to mine any of these liquid and gaseous substances is immaterial; the important fact is that the oil and gas lease would give the lessee no authority to mine solid and semisolid hydrocarbons.

The records do not show that the lessee has made any apparent effort to drill for or otherwise extract oil or gas from either of these leaseholds. Nor does it appear that anyone else has attempted to remove any deposit claimed by Mr. Miller from the lands under any other lease, license, permit or sufferance by the lessor. The inference that there is some such activity in the San Ardo area is not meaningful nor germane to this appeal.

The appellant is allowed 30 days from notice hereof within which to make formal applications for extension of the subject leases and to pay sixth year's rentals on each of $160 and $280, respectively (43 CFR 3127.1(c); see Duncan Miller, A-28398 (August 31, 1960), failing in which the requests for extension will be finally denied without further notice. The records indicate no showing by the appellant of any reason for waiver of rentals or other relief.

The decision appealed from is affirmed.

Mr. Duncan Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the filing fee will be $5 for each lease included in the appeal. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Frances A. Patton
Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures

DISTRIBUTION:
Mr. Duncan Miller (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Geological Survey, Conservation Division (6)
Gower Federal Service
Appeals List No. 1
AHO

appeal to Sec.
affirmed A-30713
11-21-66

DOCKET FILES

Oil and Gas: Generally 3120

Where the appellant has failed to establish error in stipulation requirements of the decisions appealed from, the decisions will be affirmed.

Duncan Miller, Riverside 05888 etc. (July 14, 1966)

In reply refer to:
704
Riverside 05888
05889
06904

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

July 14, 1966

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas

Decisions Affirmed

Mr. Duncan Miller has appealed from separate decisions of the Riverside district and land office dated October 12, 1965, October 7, 1965, and February 11, 1966, respectively, requiring his consent to special stipulations requested by the Forest Service for lands sought in the above-identified oil and gas lease offers, which lands are withdrawn as a Condor Sanctuary. The stipulations provided for controlled operations on lands in offer Riverside 05888, closely coordinated with the Forest Service, and for directional drilling only on lands in offers Riverside 05889 and 06904.

The appellant contends generally that the stipulations are too restrictive and unreasonable, especially as to offers Riverside 05889 and 06904, and that they should be modified. He does not, however, furnish any showing to support his contentions. He merely expresses his view that it would be advisable to move the Condor Sanctuary site, assigning certain reasons for such point of view. These comments, however, are not pertinent to the issue concerned in the land office decisions, namely, the stipulations requirements.

The records indicate that all of the lands sought are within the Los Padres National Forest and within the Sespe Wildlife Area, Condor Sanctuary, subject to the regulations and stipulations set forth in Public Land Order 695 dated January 16, 1951 (16 F.R. 581, January 23, 1951). Requested to report on the subject oil and gas lease offers, the Forest Service prescribed the stipulations provided in the withdrawal order to preserve the usefulness of the lands as a Condor sanctuary.

Since the appellant has not furnished a showing to refute the requirements of the decisions appealed from, or to establish that they are erroneous, the decisions are affirmed. The appellant is required to consent to the required stipulations within 30 days from notice hereof.

Mr. Duncan Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the filing fee will be $5 for each lease offer included in the appeal. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving by presenting positive and substantial evidence wherein the decision appealed from is in error.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures

DISTRIBUTION
Mr. Duncan Miller (Certified Mail)
Forest Supervisor, Los Padres National Forest
Div. of L&M SSF (4)
Div. of L&M FM (2)
OPD
Geological Survey, Conservation Division (9)
Gower Federal Service
Appeals List No. 1
AHO

DOCKET FILES

Oil and Gas Leases: Noncompetitive Leases 3123

Oil and gas lease offers by a corporate offeror are properly rejected when the required showing of the qualifications of the corporation to take and hold the interests sought is incomplete.

King-Stevenson Gas and Oil Company, Fairbanks 034429 (July 19, 1966)

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 AUG 3 AM 10 00

In reply refer to:
704
Fairbanks 034429

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 AUG 3 AM 10 00

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

July 19, 1966

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

King-Stevenson Gas and Oil Company : Oil and Gas
:
:

Decision Affirmed

The King-Stevenson Gas and Oil Company has appealed from the May 25, 1965 decision of the Fairbanks district and land office, which rejected the above-identified oil and gas lease offer for incompleteness of the required showing of corporate qualifications of the applicant. The decision held that no evidence had been submitted of authorization of Mr. A. Rowland Boucher to act on behalf of the company in signing the lease offer, and no reference was made to the record wherein such showing was previously filed. 43 CFR 3123.2(g).

The appellant asserts that evidence of the authority of Mr. Boucher to execute offers to lease and leases on its behalf was of record in the Bureau at the time of the drawing in which the subject offer was submitted. In support thereof the appellant refers to the showing submitted with earlier appeals on the issue of completeness of evidence of the corporate qualifications of King-Stevenson, involving its lease offers Fairbanks 032577 etc. A portion of the showing submitted with these earlier appeals was submitted with the present appeal, and request was made that it be made a part of the record of the present appeal.

Bureau decision King-Stevenson Gas and Oil Company, Fairbanks 032577 etc., issued on February 8, 1966, held with respect to the showing concerned:

> In its statement of reasons for appeal, King-Stevenson has advised that it is a Nevada corporation and that it has previously filed evidence of its corporate qualifications in the Wyoming land office in the record of Wyoming 012641 and in the Utah land office in the record of Utah 012402(A). The time when such evidence was filed is not indicated, but the appellant has asserted that there are no amendments to the material so previously filed. The appellant stated that Mr. A. Rowland Boucher, who signed the offers to lease in its behalf, is its Executive Vice President, authorized to execute all offers to lease and leases on its behalf. It stated further that only upon receipt of the subject decision was it aware of the requirement for separate showings of citizenship and holdings of stockholders owning or controlling more than 10 percent of the stock. Accordingly, there were submitted with the appeals separate statements of Messrs. John M. King and Ben T. Stevenson (stock-

> holders who own or control more than 10 percent of the company stock), declaring their citizenship and the holdings of each in outstanding stock of the corporation.
>
> The statements do not include information as to the stockholders' interests in Federal oil and gas leases in the same State; hence, they do not conform with the requirements of the regulation cited above. Further, since the corporate qualifications were not furnished with the offers, nor the required reference supplied at the time of filing of the offers, the land office properly rejected the lease offers without priority.

For the same reasons as outlined with respect to the offers Fairbanks 032577 etc., the subject lease offer Fairbanks 034429 was defective, and it was properly rejected. The land office decision is affirmed.

The notice of availability of the lands for oil and gas lease offer, published in 30 F. R. 898, January 28, 1965, provided:

> (e) Any lands which are not included in offers to lease filed during the simultaneous filing period, or for which leases do not issue, will become subject to leasing in the usual manner on a priority of filing basis and in accordance with the regulations in 43 CFR Part 3120, except that such offers to lease must describe the lands by the leasing blocks as shown on the approved leasing maps.

Thus, if the deficiency in the subject offer is supplied, the offer could then be entitled to a priority of filing time as of the time it is so completed and to further consideration in accordance with the above order, subject to any valid, intervening offers. See in this connection Raymond W. Russ, A-29294 (March 18, 1963).

King-Stevenson Gas and Oil Company is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed, the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Frances A. Patton
Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

Dist. on page 3

DISTRIBUTION:
Downing and Knowlton, Attorneys for Appellant (Certified Mail)
King-Stevenson Gas and Oil Company
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Conservation Division, Geological Survey (3)
Gower Federal Service
Appeals List No. 1
WET/FP

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1966 AUG 3 AM 10 00

appeal to Sec.
affirmed A-30716
3-30-67

DOCKET [illegible]

Oil and Gas Leases: Applications--Noncompetitive 3123

It is proper to reject a lease offer for lands embraced in existing oil and gas leases and for lands patented without mineral reservation to the United States.

Duncan Miller, Riverside 06104 (July 20, 1966)

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 JUL 29 AM 10 00
(3)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In Reply Refer to:
704
Riverside 06104

July 20, 1966

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Duncan Miller : Oil and Gas

Decision Affirmed, as Modified

Mr. Duncan Miller has appealed from a decision of our Riverside district and land office dated April 6, 1966 which rejected the above identified lease offer for the reasons that the metes and bounds descriptions did not comport with the regulation 43 CFR 3123.8, and that all the land sought is embraced in existing oil and gas leases LA-071446, LA-077598, LA-0123752, LA-0149681, LA-0165125, R-02298, R-02298-A, or is patented without mineral reservation to the United States, and so is unavailable for leasing in response to this lease offer.

On May 19, 1966, Mr. Miller withdrew from his lease offer all lands therein which are in conflict with oil and gas leases LA 071446, 077598, 0123752, and 0149681. The lease offer is so amended.

In his appeal, Mr. Miller contends that the land office issued the present lease, R-02298, with which his lease offer conflicts, in derogation of his prior rights to lease through his lease offers LA-0164853 and 0165215.

The record shows that Mr. Miller appealed from the land office demand for his consent to take leases LA-0164853 and LA-0165215 subject to the terms imposed by the Act of September 2, 1960 (30 U.S.C. § 226 et seq.). Following affirmation of the land office action by the Department, Mr. Miller brought suit against the Secretary in Federal Court. The Court of Appeals for the District of Columbia Circuit affirmed the Department's decision by its decision of April 25, 1963. No writ of certiorari was sought. As Mr. Miller did not file the required consents within 30 days after the decision of the Appellate Court, the land office properly closed the cases. Having pursued his cause through the Federal Courts, Mr. Miller cannot now be heard to complain that he was unlawfully denied his right to the leases.

Review of the file of lease R-02298 does not disclose any protest by Mr. Miller was overlooked by the land office. In the order of its filing, lease offer R-02298 was adjudicated. The offer was rejected in part because of conflicts with leases which grew out of earlier filed offers, and was accepted for all land for which it was determined to be the first qualified offer. Lease R-02298 was issued as of June 1, 1965. The request of Mr. Miller for reinstatement of his rejected lease offers for land which later was included in lease R-02298 was denied by the land office in a letter dated November 20, 1964. Lease offer R-02298 had a priority of consideration from March 7, 1963. Mr. Miller's conflicting lease offer R-06104 was filed December 21, 1964, and was properly omitted from consideration in the adjudication of offer R-02298.

Likewise, we observe no error from the record file in the manner of land office processing of the prior offer which matured into lease LA-0165125, with which the subject lease offer is also in conflict.

As to the lands in this offer in conflict with existing leases LA-0165125, R-02298, and R-02298-A, and with lands patented without mineral reservation to the United States, the land office decision is affirmed.

As to lands described by metes and bounds and which probably will be E$\frac{1}{2}$E$\frac{1}{2}$ section 27, T. 5 N., R. 19 W., S.B.M., California, when surveyed, this lease offer is suspended until final disposition of prior lease offer R-066077 is made. Where a noncompetitive oil and gas lease offer describes a tract of land by metes and bounds as unsurveyed, and a portion of the land is in fact surveyed, the offer is properly considered as to the unsurveyed land. L. M. Schwartzkopf, A-29072 (November 6, 1962).

Mr. Duncan Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

If an appeal is taken, the adverse parties to be notified are:

Shell Oil Company
1008 W. 6th St.,
Los Angeles, California 90054

E. Baden Powell
250 N. Orange Grove
Pasadena, California 91103

Robert J. Sipoha, Alastair B. Martin, Edith Martin,
Walter W. Keith and Jerome S. Rubin
1240 Paul Brown Bldg.
Saint Louis, Missouri 63101

John B. Piccolo
Acting Chief, Office of Appeals and
Hearings

Enclosures 2

DISTRIBUTION:

Mr. Duncan Miller (Certified Mail)
Shell Oil Company
E. Baden Powell
Robert J. Sipoha et al.
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
GS, Cons. Div. (3)
Gower Federal Service
Appeals List No. 1
DDRF 1 and 2
DEH

appealed to Sec.
affirmed A-30837
9-15-67

DOCKET FILES

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1966 JUL 29 AM 10 00 ③

Oil and Gas Leases: Applications --Noncompetitive 3123.1

It is proper to reject an oil and gas lease offer without priority when the offer is not accompanied by the required statements of interest of the parties and the showing of qualifications of the additional parties named, and where such showing is not filed within the fifteen-day period allowed by regulation 43 CFR 3123.2(c)(3).

Where an oil and gas lease offeror has an interest in the lease offer of another applicant for the same tract of land in a drawing of simultaneously filed noncompetitive lease offers, it is proper to disqualify both lease offers from participation in the drawing, because it is inherently unfair to permit the applicant to have 1-1/3 chances of success.

Charles D. Landre et al., Riverside 06916 (July 20, 1966)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In Reply Refer to:
704
Riverside 06916

July 20, 1966

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Charles D. Landre :
Olga M. Yeager :
Carol Fullerton McCoy

Oil and Gas

Decision Affirmed, as Modified

Mr. Charles D. Landre, Mrs. Olga M. Yeager and Mrs. Carol Fullerton McCoy have appealed from a decision of the Riverside district and land office, dated August 6, 1965, which rejected the above-identified lease offer filed July 22, 1965 for Parcel 67-5. The offer was rejected because it indicated Olga M. Yeager and Carol Fullerton McCoy to be parties in interest in the offer and lease, if issued, but the offer was not accompanied by nor was there filed within 15 days after filing of the lease offer a separate statement signed by the interested parties and the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them, if oral, and a copy of the agreement, if written, and evidence of the qualifications of Mrs. Yeager and of Mrs. McCoy to take and hold such lease interest, as required by 43 CFR 3123.2(c)(3). The decision stated that this offer might be further disqualified if the Carol Fullerton McCoy indicated to be a party in interest in this lease offer is the same person as the Carol Fullerton McCoy who also filed another lease offer drawing entry card for the same Parcel 67-5.

The appellants do not refute the holding of the land office but contend that it was their intention to acquire a lease in which each of the three would hold an undivided one-third interest as lessee and that, for convenience, they had placed the names and signatures of two of the offerors on the reverse side of the lease offer drawing entry card. The applicants profess they were unaware of the regulation requiring separate statements of interest and qualifications to be filed within 15 days after filing of the offer. In addition, the offeror McCoy appended to the appeal a purported assignment of her interest in the subject lease offer to the other two offerors in an attempt to eliminate the defect causedby her separate lease offer in the simultaneous drawing for the same lands.

Whatever reasons the appellants may now adduce, the land office was confined to being advised by the statements of the offeror in this offer. If error was committed by him in preparation of the offer, the Department can acknowledge a correction of his error but it cannot correct it retroactively to the detriment of others. When Mr. Landre filed his offer, he stated that Mrs. Yeager and Mrs. McCoy were also parties in interest. Therefore, the land office correctly ruled that the required statements were not filed in time, and properly rejected the offer. Timothy G. Lowry, A-30487 (March 16, 1966).

The land office decision suggested that Mrs. McCoy might have an interest in more than one lease offer for the same parcel. This Mrs. McCoy has admitted in the appeal. Accordingly, we must hold that the duality of lease offers, inadvertent though it may have been, was cause to disqualify both lease offers from the drawing. An interest which an oil and gas lease applicant has in the offer of another applicant for the same land in a drawing of simultaneously filed noncompetitive lease offers which gives the first applicant, in effect, 1-1/3 chances of success in the drawing is inherently unfair whether or not there has been collusion or intent to deceive the Department, and both lease offers are properly disqualified from participation in the drawing. Schermerhorn Oil Corporation, Kenwood Oil Company, 72 I. D. 486 (1965). Subsequent assignment by Mrs. McCoy of her interest in the lease offer which drew priority may not now be accepted as correcting the original disqualification caused by the dual filings.

It is clear from the regulation 43 CFR 3123.9(c)(3) that an offeror acquires no vested right to a lease merely because his offer is drawn in the simultaneous filing drawing procedure. The drawing simply establishes which offer will be considered; it does not constitute a determination that the offer so drawn is valid or that any defect in such offer may be waived. A defective offer drawing priority must be rejected. George N. Keyston, Jr., Ltd., 70 I.D. 156 (1963). A lease offer initiates only an inchoate right to a lease; it is not a vested right. The offer must be valid and complete if a lease is to be issued, i.e., it must meet all mandatory requirements of the regulations, including the requirement for a timely showing that the parties in interest in the offer and lease, if issued, are qualified under the law to take and hold the lease sought.

The decision appealed from is affirmed, as modified herein.

Mr. Charles D. Landre, Mrs. Olga M. Yeager, and Mrs. Carol Fullerton McCoy are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C., 20240. The amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed, the appellants will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

John B. Piccolo
Acting Chief, Office of Appeals
and Hearings

Enclosures 2

DISTRIBUTION

Mr. Charles D. Landre (Certified Mail)
Mrs. Olga M. Yeager (Certified Mail)
Mrs. Carol Fullerton McCoy (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
GS, Cons. Div. (3)
Gower Federal Service
Appeals List No. 1
DEH

DOCKET FILES

Oil and Gas: Generally 3120

Where the appellant has failed to establish error in stipulation requirements of the decision appealed from, the decision will be affirmed.

Duncan Miller, Riverside 05972 (August 11, 1966)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 AUG 22 AM 10 00 (3)

In reply refer to:
704
Riverside 05972

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D.C. 20240

August 11, 1966

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Duncan Miller : Oil and Gas
:
Decision Affirmed

Mr. Duncan Miller has appealed from the April 6, 1966 decision of the Riverside district and land office, to the extent it required his written consent to special stipulations requested by the Forest Service for certain lands in the above-identified oil and gas lease offer which are withdrawn for the Sespe Wildlife Area, Condor Sanctuary.

The appellant contends generally that the stipulations are excessively burdensome and should be relaxed. He does not, however, furnish any showing to support his contentions. He merely expresses the view that it would be advisable to move the condor sanctuary site, assigning certain reasons for such point of view. These comments, however, are not pertinent to the issue concerned in the district and land office decision.

The record indicates that the lands concerned are within the Los Padres National Forest and the Sespe Wildlife Area, Condor Sanctuary, subject to the regulations and stipulations set forth in Public Land Order 695 dated January 16, 1951 (16 F. R. 581, January 23, 1951). In reporting on the subject offer, the Forest Service prescribed the stipulations provided in the withdrawal order to preserve the usefulness of the lands as a condor sanctuary and, because a portion of the lands lies within the drainage area to Sespe Creek above the proposed Oat Mountain Diversion Dam site, it also included a provision in the stipulations for protection of the lands from watershed pollution.

Since the appellant has not furnished a showing to refute the requirements of the decision appealed from, or to establish that they are erroneous, the decision is affirmed. The appellant is required to consent to the stipulations within 30 days from notice hereof.

Mr. Duncan Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving by presenting positive and substantial evidence wherein the decision appealed from is in error.

Frances A. Patton
Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2
Dist. on page 2

DISTRIBUTION:
Mr. Duncan Miller (Certified Mail)
Forest Supervisor, Los Padres National Forest
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Geological Survey, Conservation Division (3)
Gower Federal Service
Appeals List No. 1
AHO

DOCKET FILES

Oil and Gas Leases: Termination 3125.1

An oil and gas lease will not be terminated by operation of law (30 U.S.C. § 188) where a check for the advance rental payment was timely submitted to the land office and then erroneously dishonored by the drawee bank.

Desco Oil, Sacramento 064673 (August 16, 1966)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 SEP 1 PM 3 14

In reply refer to:
704
Sacramento 064673

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

August 16, 1966

DECISION

Desco Oil : Oil and Gas

Decision Reversed

Desco Oil has appealed from a decision of our Sacramento land office dated February 11, 1966, which held that competitive oil and gas lease Sacramento 064673, issued January 1, 1961 for a period of five years and so long thereafter as oil or gas is produced in paying quantities, had terminated by operation of law on December 31, 1965, at the end of its primary term of five years because of failure of the lessee to pay rental for the sixth lease year on or before January 1, 1966.

The record shows that drilling operations had been commenced on the leasehold prior to the end of the primary term of the lease and were being diligently prosecuted on December 31, 1965, thereby entitling the lease to a 2-year extension pursuant to 30 U.S.C. § 226(e). Desco timely tendered payment of the sixth lease year rental by check No. 181 drawn by D & S Oil Co., Ltd., but the drawee bank refused to honor this check upon presentation for payment because it had only one signature instead of the customary two. The land office then held the lease to have terminated, citing 43 CFR 3125.1(d), and the lessee subsequently resubmitted the rental check, bearing two signatures, to the land office.

With its appeal, Desco submitted an affidavit from an officer of the Greenfield State Bank, Bakersfield, California, upon which the dishonored check had been drawn, wherein it was stated that the check No. 181 of D & S Oil Co., Ltd., in the amount of $120 payable to the Bureau of Land Management, had erroneously been returned because the bank had been authorized by D & S Oil Co., Ltd., to honor checks drawn by one of the two persons authorized to sign its checks, and ordinarily it would have honored the subject check upon its presentation as the account at all material times had sufficient funds to pay the check.

Where a departmental regulation required that advance rental be submitted with an offer to lease for oil and gas, a check for the required rental submitted with the offer, which was erroneously dishonored by the drawee bank, was held to have been properly filed. Duncan Miller, A-29278 (May 13, 1963). Similarly, as the appellant has shown that the rental check was erroneously dishonored by the drawee bank, the required rental payment for the sixth lease year of oil and gas lease Sacramento 064673 is deemed to have been properly and timely made.

The decision appealed from is reversed and the case file is transmitted to the Sacramento land office, through our State Director for California, for further appropriate action.

John B. Piccolo

Acting Chief, Office of Appeals
and Hearings

DISTRIBUTION
Mr. Jack E. Lund, Attorney for Desco
Desco Oil
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Geological Survey, Conservation Division
Gower Federal Service
Appeals List No. 1
DEH

appeal to Sec
affirmed A-30723 - 4-18-67

Oil and Gas Leases: Rentals 3125.1

An oil and gas lease subject to the Act of July 29, 1954 (30 U.S.C. § 188(b)) is properly declared to be terminated when the payment for the advance rental is not received on or before the anniversary date of the lease.

M. B. Dreblow, Sacramento 079558 (August 26, 1966)

Cy in Case

DOCKET FILES

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 SEP 12 AM 10 00 ③

In reply refer to:
704
Sacramento 079558

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

August 26, 1966

Certified Mail
Return Receipt Requested

DECISION

M. B. Dreblow : Oil and Gas

Decision Affirmed

Mr. M. B. Dreblow has appealed from a decision of our Sacramento land office dated July 7, 1966 which declared oil and gas lease Sacramento 079558 terminated by operation of law pursuant to 30 U.S.C. § 188(b), for failure of the lessee to pay advance rental for the lease year commencing July 1, 1966 on or before the anniversary date of the lease.

The appellant contends that a check for payment of the lease rental was mailed prior to July 1, 1966, and that he was unaware the payment had to be received by the land office on or before that date, believing rather that timely mailing of the remittance was adequate.

The record shows that the envelope containing the rental payment from Mr. Dreblow was mailed from Bakersfield, California, and bears a postal cancellation of "P.M., June 30, 1966". The envelope is stamped as having been received in the land office at 10:00 a.m., July 5, 1966. The oil and gas lease Sacramento 079558, having been issued as of July 1, 1965, required payment of the second lease year's rental on or before July 1, 1966 (43 CFR 3125.1(a)). An oil and gas lease subject to the act of July 29, 1954 (30 U.S.C. § 188(b)), automatically terminates for failure to pay the annual rental on or before the anniversary date of the lease when the rental is not received by the anniversary date, notwithstanding the fact that the lessee mailed the rental within time for it to be received prior to the anniversary date, but the mailing was not delivered to the land office in time through apparent delay in the post office. Harold Ladd Pierce, A-30341 (June 30, 1965).

The decision appealed from is affirmed.

There is no existing statutory authority to reinstate an oil and gas lease which has terminated for nonpayment of rental. As stated in the land office decision, the leased lands were posted as available for leasing in accordance with 43 CFR 3123.9, and a new oil and gas lease, S-20, was issued as of August 1, 1966 to Robert J. McMahon.

Mr. M. B. Dreblow is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

If an appeal is taken herefrom, Mr. Robert J. McMahon, 1309 Pine Avenue, Manhattan Beach, California, 90266, must be served as an adverse party.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION
Mr. M. B. Dreblow (Certified Mail)
Mr. Robert J. McMahon
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Geological Survey, Conservation Division (3)
Gower Federal Service
Appeals List No. 1
DEH

DOCKET FILES

Mineral Leasing Act for Acquired Lands: Lease Requirements 3212

An acquired lands lease offer for oil and gas is subject to rejection when it is deficient by more than 10% in the advance rental payment.

Robert G. Lynn, Sacramento 079218 (September 27, 1966)

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 OCT 5 AM 10 00

6

In reply refer to:
704
Sacramento 079218 (Acq.)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

September 27, 1966

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Robert G. Lynn	:	Oil and Gas
	:	Acquired Lands

Decision Modified

Mr. Robert G. Lynn has appealed from a decision of our Sacramento land office dated August 13, 1965 which rejected the above-identified lease offer for acquired lands for the reason that the land description was incorrect, but which also stated that the rejection was without prejudice to the right of the offeror to submit a new lease offer with a correct description for issuance of a lease for oil only as the lands sought are embraced in a compensatory royalty agreement entered into by the United States and the Standard Oil Company of California on July 1, 1942, whereby the Government agreed not to drill for nor produce natural gas from these lands.

With his appeal, Mr. Lynn submitted a corrected land description, which has been reviewed by the Bureau's Division of Engineering. It reports the area of the land sought in the lease offer is 167.29 acres, instead of 150.35 acres as set forth in the offer.

The offeror submitted payment of $75.50 for advance rental on 150.35 acres. The proper amount of advance rental for the 167.29 acres actually described is $84.00. The submitted rental payment is deficient by more than 10%, so the offer must be summarily rejected pursuant to 43 CFR 3123.3(b), as the defect does not fall among the curable defects set forth in 43 CFR 3123.4. (See also 43 CFR 3211.3)

As the lease offer is fatally defective, there is no need to discuss the arguments of the appellant relative to the other points in the land office decision.

The rejection of the lease offer is affirmed, and the land office decision is modified as indicated herein.

Mr. Robert G. Lynn is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington,

D. C. 20240. The amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

John B. Piccolo

Acting Chief,
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION:
Mrs. Robert G. Lynn (Certified Mail)
Standard Oil Company of California
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Geological Survey, Conservation Division (3)
Gower Federal Service
Appeals List No. 1
DEH

Oil and Gas Leases: Generally 3120

It is proper to reject an oil and gas lease offer for land included in a subsisting lease.

C. E. Strange, Sacramento 50 (November 15, 1966)

DOCKET FILES

1- In case file

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 DEC 29 AM 10 00 ③

In reply refer to:
704
Sacramento 50

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

November 15, 1966

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

C. E. Strange : Oil and Gas
:
:
Decision Affirmed

Mr. C. E. Strange has appealed from a decision of our Sacramento land office dated August 22, 1966, which rejected his offer to lease acquired lands for oil and gas, Sacramento 50, for the reasons that the land sought is public land of the United States, not subject to leasing under the Mineral Leasing Act for Acquired Lands, and that the land is presently embraced in subsisting oil and gas lease Sacramento 061176.

The appellant contends the land office erred because the United States acquired title to the subject land by a warranty deed dated May 13, 1966 from Standard Oil Company of California, accepted by the United States on August 11, 1966, and that the existing lease was void from its inception.

The record shows that the subject land, lot 19 section 2, T. 30 S., R. 21 E., M.D.M., California, was included in noncompetitive oil and gas lease Sacramento 061176, issued pursuant to 30 U.S.C. § 181 et seq., for primary term of 5 years from June 1, 1960, to Bernice C. Anderson, and was extended pursuant to 30 U.S.C. § 226 through May 31, 1970. Through mesne assignments, record title to this lease is now vested in Jade Oil & Gas Company. The land office records showed the subject land to be public land available for oil and gas leasing at the time lease offer Sacramento 061176 was filed February 23, 1960, the land having been included in a previous public land lease Sacramento 039851, which terminated January 31, 1960. Subsequent investigation disclosed a question of ownership of the subject land, which was resolved by an exchange pursuant to section 8 of the Taylor Grazing Act (43 U.S.C. § 315g) between the Standard Oil Company of California, the adverse claimant, and the United States. The exchange was perfected by the acceptance, on August 11, 1966, by the United States of the warranty deed executed by Standard on May 13, 1966.

As there is an outstanding oil and gas lease on the subject land, the lease offer of the appellant was properly rejected. Land included in an outstanding oil and gas lease is not available for leasing to others, and an application filed for such land must be rejected whether or not the outstanding lease was properly issued. Duncan Miller, A-30434 (June 8, 1965). See also R. B. Whittaker, Mrs. Jacqueline Anderson, 63 I.D. 124 (1956).

The Mineral Leasing Act for Acquired Lands is not applicable to lands reconveyed to the United States as basis for an exchange pursuant to 43 U.S.C., § 315g; rather the lands reconveyed become public domain after publication of an appropriate opening order. Lands the title to which is conveyed to the United States pursuant to a private exchange authorized by section 8 of the Taylor Grazing Act do not become available for oil and gas leasing simply upon acceptance of title by the United States, but only when an order is issued opening the lands to such disposition. J. E. Dawson, Jr., A-27838 (March 2, 1959). Even if the lands were available for leasing, the offer of the appellant would not have been acceptable as it was not made under the proper law.

Accordingly, the decision appealed from is affirmed.

Mr. C. E. Strange is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D.C. 20240. The amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error. If an appeal is taken, the adverse party to be served is Jade Oil & Gas Company, Suite 308, Avenue of the Stars, Century City, Los Angeles, California 90067.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION:
C. E. Strange (Certified Mail)
Jade Oil & Gas Company
Hon. George Murphy, United States Senate
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Geological Survey, Conservation Division (3)
Gower Federal Service
Appeals List No. 1
DEH

POCKET FILES

Oil and Gas Leases: Description of Land Fixed

It is proper to reject an oil and gas lease offer for unpatented public lands where the metes and bounds description of the lands sought to be leased is insufficient to identify the lands because it does not close.

Duncan Miller, Assistant Solicitor (January 31, 1962)

The Mineral Leasing Act for Acquired Lands is not applicable to lands reconveyed to the United States as lands for an exchange pursuant to 43 U.S.C. § [illegible], because the lands reconveyed become public domain after publication of an appropriate opening order. Lands the title to which is accepted by the United States pursuant to a private exchange authorized by section 8 of the Taylor Grazing Act, [illegible] become available for all the public-land laws upon acceptance of title by the United States, but only when so ordered in [illegible] opening the lands to such disposition. [illegible] (March 1, [illegible]). Even if the lands were available for leasing, the offer of the appellant would not have been acceptable as it [illegible] Land.

Accordingly, the decision appealed from is affirmed.

Mr. [illegible] is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR [illegible]. See enclosed Form [illegible] and Circular [illegible]. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D.C. [illegible]. The appeal and the filing fee [illegible] must be in strict compliance with the regulations. If an appeal is taken the appellant will have the burden of [illegible] [illegible] If no appeal is taken, [illegible] is made [illegible] [illegible] City, [illegible]

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

Distribution:
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
Geological Survey, Conservation Division (2)
[illegible]
[illegible]
[illegible]

DOCKET FILES

Oil and Gas Leases: Description of Land 3123.8

> It is proper to reject an oil and gas lease offer for unsurveyed public lands where the metes and bounds description of the lands sought to be leased is insufficient to identify the lands because it does not close.

Duncan Miller, Riverside 06971 (January 20, 1967)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1967 FEB 3 AM 10 00 ③

In reply refer to:
704
Riverside 06971

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

January 20, 1967

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Duncan Miller : Oil and Gas
:
:

Decision Affirmed

Mr. Duncan Miller has appealed from a decision of our Riverside district and land office dated July 27, 1966, insofar as it rejected his oil and gas lease offer Riverside 06971 for the reason that the metes and bounds description given for the unsurveyed NW¼ section 1, T. 5 N., R. 20 W., S.B.M., California, is inadequate to identify any parcel of land. 1/

The appellant admits the error is his metes and bounds description in the offer but contends the error was strictly an inadvertence and that he should have been allowed 30 days to file an amended description.

The metes and bounds description in the lease offer reads as follows:

> Commencing at a point 5½ miles north and one-half mile west from the Northeast corner of Sec. 1, T. 4 N., R. 20 W., thence North to the South boundary of the line of T. 6 N., thence West ½ mile, thence South to a point due East of the point of beginning, thence ½ mile East to point of beginning, which will probably be if surveyed the NW¼ sec. 1, T. 5 N., R. 20 W.

As written, this metes and bounds description does not identify any particular land because of the language of the third call. An oil

---

1/ The decision also rejected the offer as to other, surveyed tracts for reasons that they were not available for leasing until posted (43 CFR 3123.9(c)(3)) or that the agency having jurisdiction over the surface objected to issuance of an oil and gas lease. Miller did not question the propriety of these rejections in his appeal. As to these tracts, the rejection of his offer has become final. The decision also called on Miller to accept certain special stipulations as a condition precedent to issuance of an oil and gas lease for other available tracts. The record does not show whether Miller did comply and execute the required stipulations.

and gas lease offer will be rejected where the description of the land applied for contains an ambiguity which makes uncertain the identity of the land covered by the offer. Robert B. Schick, A-28928 (August 6, 1962). Further, an offer to lease unsurveyed public land for oil and gas purposes is properly rejected when the metes and bounds description of the land sought to be leased is insufficient to identify the land because it does not close. Harold L. Rowland, A-29092 (December 10, 1962).

The contention of the appellant that he should be allowed a period of 30 days to file an amended offer is not supported by the regulations. Except for the curable defects set out in 43 CFR 3123.4, it is proper to reject without priority oil and gas lease offers which do not satisfy the regulatory requirements. The land office action in this case was correct.

The decision appealed from is affirmed.

Mr. Duncan Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D.C. 20240. The amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Frances A. Patton
Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures

DISTRIBUTION:
Duncan Miller (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Geological Survey, Conservation Division (3)
Gower Federal Service
Appeals List No. 1
DEH

3 Copies rec'd.

DOCKET FILES

Oil and Gas Leases: Description of Land 3123.8

An oil and gas lease offer is properly rejected when it does not adequately describe the land applied for.

W. F. Gilbert and J. W. Sullivan, Sacramento 284 (April 13, 1967)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1967 MAY 15 AM 10 00

In reply refer to:
704
Sacramento 284

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

April 13, 1967

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

W. F. Gilbert :
J. W. Sullivan :
: Oil and Gas
:

Decision Affirmed

An appeal has been submitted by W. D. Lewis in behalf of the above-identified persons whose offer to lease Sacramento 284 was rejected by land office decision dated January 18, 1967, for the reason that the land description was insufficient to identify the lands sought.

To date no evidence has been received from the offerors, Messrs. Gilbert and Sullivan, to indicate that they ratified the action of Mr. Lewis in taking the appeal. Cf. *Barbara C. Storey*, A-29584 (September 26, 1963). The time for ratification of this appeal has expired.

The purported appeal does not show error in the land office action, but appears to be only the transmittal medium for an attempted remedial offer. It would appear that the appellants have admitted the original land description was defective and thus have no grounds for an appeal.

The lease offer was submitted December 15, 1966, on Form 4-1158 (9th Ed. August 1961). The appellants apparently believe they are afforded opportunity, given by Item 9 of the Instructions on the lease offer form, to file a new offer and retain the priority of filing of the original offer. This is not so. With revision of the oil and gas leasing regulations, published March 31, 1964, at 29 F.R. 4511 ff., the provision to cure a defect in land description in a lease offer was eliminated. The regulation was changed to read pertinently:

> "Except as provided in § 3123.4, an offer which is not filed in accordance with the regulations in this part will be rejected and will afford the offeror no priority." (43 CFR 3123.3(b)).

The curable defects listed in 43 CFR 3123.4 do not include insufficient or inadequate land description. The requirement that land surveyed under the public land rectangular system must be described by legal subdivision, section, township and range is contained in 43 CFR 3123.8. As the original offer submitted by the appellants described the lands sought, *inter alia*, as "S½ - S½ - NE¼ - NE¼ - NW¼ section 17, /T. 20 S., R. 13 E., M.D.M./, it obviously did not meet the regulatory requirements.

An oil and gas lease offer is properly rejected when it does not adequately describe the land applied for. *J. R. Wegierski*, A-30252 (December 28, 1964). Action by the land office to reject the lease offer was correct and the decision appealed from is affirmed.

As there is no provision in the regulations to allow amendment or correction of land description in a defective lease offer, the purported corrected lease offer may not be accepted for filing until accompanied by payment of the filing fee and advance rental as required by 43 CFR 3123.2. An attempted amendment of an oil and gas lease offer which substitutes other lands for those applied for originally must be processed as a new filing. Alberta Link, Fairbanks 016136 (September 17, 1958).

Messrs. W. F. Gilbert and J. W. Sullivan are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures

DISTRIBUTION:
W. F. Gilbert (Certified Mail)
J. W. Sullivan (Certified Mail)
W. D. Lewis
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
GS, Cons. Div. (3)
Gower Federal Service
Appeals List No. 1
DEH

DOCKET FILES

029

Appeals Procedure: Generally 1840

A protest against allowance of an application is properly dismissed when the basis for the protest is a matter not within the jurisdiction of the Bureau of Land Management.

Richard M. Ferguson, Los Angeles 0169501, etc. (April 26, 1967)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1967 MAY 18 PM 2 51

In reply refer to:
704
LA 0169501
R 05843

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D. C. 20240

April 26, 1967

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Richard M. Ferguson : Oil and Gas
:

Decision Affirmed

Mr. Richard M. Ferguson has appealed from a decision of our Riverside district and land office dated October 12, 1966, which rejected his protest against issuance of a patent to Guy F. Atkinson Company in response to mineral patent application LA 0169501 or forest exchange application R 05843, each application being for land in section 24, T. 4 N., R. 25 W., S.B.M., California, within the Los Padres National Forest. 1/

The decision stated that the rights of Ferguson in Federal oil and gas leases embracing the lands sought by Atkinson would not be derogated because any patent issued under the pending applications of Atkinson would reserve the oil and gas to the United States, together with the right to enter upon the land, drill for and remove the oil and gas. The decision further stated that the problem of Ferguson was his inability to obtain access over other patented lands controlled by Atkinson to reach the lands he has leased for oil and gas from the Government, and held that the right-of-way problem over privately-held lands is not a matter within the jurisdiction of the land office.

The appellant contends that control of access gives Atkinson control over exploration for oil and gas in the Government leases.

The Forest Service has reported that, although the land in question is within the Los Padres National Forest, the Government does not have legal access to the land involved, the only road access being over a

---

1/ LA 0169501 mineral application embraces S½NE¼SE¼, NW¼SE¼, W½SW¼NE¼, SE¼NW¼ section 24, T. 4 N., R. 25 W., S.B.M., Guy F. Atkinson Company. R 05843 forest exchange application embraces W½NE¼, E½NW¼, N½SE¼ section 24, T. 4 N., R. 25 W., S.B.M., and other land not here pertinent, Guy F. Atkinson Company. LA 0166444 oil and gas lease embraces N½SE¼ section 24 and other land not here pertinent. LA 0171448 oil and gas lease embraces S½NE¼, SE¼NW¼ section 24. R 02259 oil and gas lease embraces N½NE¼, NE¼NW¼ section 24 and other land not here pertinent. Each oil and gas lease is held by Louise Safarik 33-1/3%, John B. Ferguson 22-2/9%, Robert B. Ferguson 22-2/9%, and Richard M. Ferguson 22-2/9%.

road developed by Atkinson over its own and other contiguous private lands. Other access to these lands might be constructed at not inconsiderable cost.

Once a land patent has been issued, the United States is divested of all jurisdiction over the land or title thereto, so that the present dispute between the appellant and the owner of fee title to land may not be brought before the land office. The Department has no jurisdiction over land to which patent has been issued. Tennes J. Aarstad, A-28457 (September 6, 1960). See also Paul Unruh, et al., A-30441 (October 27, 1965). The Courts, not the Bureau of Land Management, have jurisdiction to determine questions pertaining to the patented lands.

Accordingly, it was proper for the land office to dismiss the protest of Ferguson against the applications of Atkinson, and that action is affirmed.

Mr. Richard M. Ferguson is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee is $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error. If an appeal is taken, the adverse party to be served is Adams, Duque & Hazeltine, attorneys for Guy F. Atkinson Company, 523 West Sixth Street, Los Angeles, California 90014.

Frances A. Patton
Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION:
Richard M. Ferguson (Certified Mail)
Adams, Duque & Hazeltine
Guy F. Atkinson Company
Regional Forester, USDA
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Geo. Sur., Cons. Div. (3)
Gower Federal Service
Appeals List No. 1
DEH

appealed to Sec.,
Affirmed as modified
A-30851 - 11-16-67

DOCKET FILES

Oil and Gas Leases: Generally -- Reserved Lands 3103

An oil and gas lease offeror is properly required to furnish written consent to special stipulations as a condition precedent to the issuance of a lease where the lands concerned are under the administrative jurisdiction of the Forest Service, U. S. Department of Agriculture, and that agency has recommended the special stipulations for the protection of a recreation area embracing the lands.

Cecil H. Phillips, Riverside 104 (June 7, 1967)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1967 JUN 12 AM 10 00

In reply refer to:
704
Riverside 104

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

June 7, 1967

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Cecil H. Phillips

Oil and Gas

Decision Affirmed

Mr. Cecil H. Phillips has appealed from the January 13, 1967 decision of the Riverside district and land office, to the extent it required his written consent to special stipulations recommended by the Forest Service as a condition precedent to the issuance of a lease of lands in his oil and gas lease offer situated in the Reyes Peak Recreation Area of the Los Padres National Forest and described as S½NW¼ sec. 3, S½NE¼, SE¼ sec. 4, SW¼NE¼, S½NW¼, S½ sec. 5, Lots 1, 2, 3, 4, S½NE¼, N½SE¼ sec. 6, T. 6 N., R. 23 W., S.B. Mer., California. The special stipulations include the following provisions:

> No occupancy of the surface area is authorized. The lessee is authorized to employ directional drilling to exploit the mineral resources under this area provided that such drilling will not disturb the surface of the area or otherwise interfere with the use being made of it by the Forest Service.

The appellant urges that he be allowed a lease of the above lands without the restrictive stipulations so that he may have a total of 3,700 acres under lease in the immediate vicinity and justify the costs of reworking a well in the E½ sec. 11, above township and range. He outlines generally his plans for such drilling and he asserts that the restrictive stipulations would cause unnecessary costs in the drilling.

The record shows that all of the described lands are withdrawn for the Los Padres National Forest under the administrative jurisdiction of the Department of Agriculture. The regulation, 43 CFR 3103.2, provides pertinently:

> Offerors for noncompetitive oil and gas leases . . . for lands, the surface control of which is under the jurisdiction of the Department of Agriculture, will be required to consent to the inclusion therein of the stipulation on a form approved by the

> Director. . . . . Additional conditions may be imposed to protect the land withdrawn if deemed necessary by the agency having jurisdiction over the surface.

The authorized officer of the Department of Agriculture has requested that the special stipulations be imposed on any lease issued for the described lands. The land office therefore correctly required this offeror to accept the stipulations as a condition precedent to issuance of an oil and gas lease pursuant to his offer. Cf. H. E. Shillander, A-30279 (January 26, 1965).

The appellant has not demonstrated any error in the land office action requiring consent to the special stipulations. He has not established that the required stipulations for the protection of a needed recreation area in populous Southern California are not justified. Nor has he shown precisely in what manner a lease of the above lands without the right of surface occupancy would be detrimental or unduly restrictive in his proposed reworking of the well in the E$\frac{1}{2}$ sec. 11.

Accordingly, the decision appealed from is affirmed.

Mr. Cecil H. Phillips is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Frances A. Patton
Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION

Mr. Cecil H. Phillips (Certified Mail)
Regional Forester, Forest Service, USDA
Forest Supervisor, Los Padres National Forest
Forest Service, Division of Watershed Management (12)
GS, Cons. Div. (3)
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Gower Federal Service
Appeals List No. 1
AHO

DOCKET FILES

Oil and Gas Leases: Availability of Lands 3123.9

It is proper to vacate a notice of availability of a particular tract of land for oil and gas leasing where it is ascertained that part of the tract is unavailable for such leasing because it is within the limits of an incorporated city, and to rescind an oil and gas lease issued for part of the posted tract.

Duncan Miller, Riverside 07262 (June 8, 1967)

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1967 JUN 13 PM 2 46

In reply refer to:
704
Riverside 07262

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

June 8, 1967

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1967 JUN 13 PM 2 46

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas

Decision Vacated;
Lease Rescinded.

Mr. Duncan Miller has appealed from a decision of our Riverside district and land office dated June 16, 1966, which rejected, in part, his simultaneous drawing entry card (offer to lease) for the reason that the rejected lands are within the corporate limits of the City of Los Angeles, and are not available for oil and gas leasing (43 CFR 3100.1(a)(3)). A lease was issued for the remainder of the lands in the offered parcel.

The appellant contends that he should be given the option of accepting the lease, as issued, for less lands than the posted list described or of having his offer withdrawn.

The record shows that oil and gas lease LA 0133279, which embraced lots 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 17, 18 and 19 section 1, T. 2 N., R. 14 W., E½SW¼, NW¼SE¼ section 21, T. 3 N., R. 14 W., S.B.M., California, expired October 31, 1965. All the lands formerly in lease LA 0133279 were included as Parcel 71-2 in the list of lands available for simultaneous oil and gas filings posted November 15, 1965 in the Riverside district and land office (43 CFR 3123.9). Miller timely filed the only drawing entry card for Parcel 71-2. It was discovered that lots 1, 2, 7, 10, 11, 12, 17, 18, and 19 section 1, T. 2 N., R. 14 W., are within the corporate limits of the City of Los Angeles, and are not subject to oil and gas leasing under the Mineral Leasing Act (30 U.S.C. §§ 181 et seq.). The land office issued a lease for only those posted lands which are not within the corporate limits of the City of Los Angeles.

The question is whether the land office should have issued a lease for less than the whole parcel posted as Tract 71-2.

The regulations provide pertinently:

43 CFR 3123.9 Availability of Lands

> (b) * * * The posted list will describe the lands by leasing units identified by parcel numbers, which will be supplemented by a description of the lands in accordance with § 3123.8, i.e., by subdivision, section, township and range if the lands are surveyed or officially protracted, or if unsurveyed, by metes and bounds. * * *
>
> (c) Offers to lease such designated leasing units by parcel numbers must be submitted on a form approved by the Director, "Simultaneous Oil and Gas Entry Card" signed and fully executed by the applicant or his duly authorized agent in his behalf. The entry card will constitute the applicant's offer to lease the numbered leasing unit by participating in the drawing to determine the successful drawee. By signing and submitting the entry card, the applicant agrees that he will be bound to a lease on a current form approved by the Director for the described parcel if such a lease is issued to him as a result of the drawing. * * *
>
> (1) Only one complete leasing unit, identified by parcel number, may be included in one entry card. * * *
>
> (Emphasis supplied.)

Thus the regulations clearly provide for the posting of notice of the availability of lands for simultaneous filing of lease offers and for the receipt of lease offers for such lands only by complete leasing units identified by parcel numbers. Accordingly, the erroneous inclusion in the posted Parcel 71-2 in the instant case of lands within the corporate limits of the City of Los Angeles, which were not available for such leasing under the Mineral Leasing Act, as amended, supra, rendered the posted notice defective as to the entire numbered parcel. The posting must be, therefore, regarded as ineffective as to the entire parcel. It follows that any offer submitted in response to such defective posting should have been returned without priority, and any lease which was issued pursuant to an offer received in accordance with such defective posted listing should be cancelled as erroneously issued. That Miller's offer was the only offer received for the posted parcel is not material, nor can that fact serve to accord him any option to accept or refuse a lease as to a portion only of the posted lands, namely, those lands outside the corporate limits of the City of Los Angeles. Offers may not be received for lands which, because of an erroneous land description, have not been made available for filing in accordance with the pertinent regulations. The lands in Parcel 71-2 outside the corporate limits of the City of Los Angeles will not be available for filing of lease offers until a correct posting is had in the land office in accordance with 43 CFR 3123.9. Cf. *Cities Service Oil Company et al.*, BLMA 077143 etc. (December 2, 1966).

The district and land office decision of June 16, 1966 is vacated. The oil and gas lease Riverside 07262 is rescinded as erroneously issued. *W. H. Bird et al.*, 72 I.D. 287 (1965). The posting of Tract 71-2 in the November 1965 list of available lands is cancelled.

When this decision becomes final, the record will be returned to the district and land office for appropriate action, including refund of all moneys submitted with the drawing entry card of this appellant for Parcel 71-2.

Duncan Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is taken the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Newton Frishberg

Chief, Office of Appeals
and Hearings

Enclosures

DISTRIBUTION

Duncan Miller (Certified Mail)
Div. of Watershed Management, Forest Service, USDA (12)
Regional Forester, USFS, San Francisco, California
Federal Power Commission (PWR-LP ERP-Calif), Washington, D. C.
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Geological Survey, Conservation Division (3)
Gower Federal Service
Appeals List No. 1
DEH

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1967 JUN 13 PM 2 46

appeal to Sec
dismissed A-30869
9-8-67

DOCKET FILES

Oil and Gas Leases: Applications — Noncompetitive 3123

An oil and gas lease offer is properly rejected where it covered less than 640 acres of land and there was adjoining land available for leasing when the offer was filed.

Duncan Miller, Riverside 397 (June 26, 1967)

1967 JUL 12 PM 2 54
DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

In reply refer to:
704
Riverside 397

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

June 26, 1967

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Duncan Miller : Oil and Gas
:
Decision Affirmed

Duncan Miller has appealed from the February 10, 1967 decision of the Riverside district and land office which rejected his above-identified oil and gas lease offer for the unsurveyed S½ sec. 12, T. 5 N., R. 20 W., S.B. Mer., California. The decision stated that there was additional land available for leasing adjacent to the 320 acres sought, when the subject offer was filed, and that the offer for less than 640 acres of available lands, which does not come within any of the exceptions of 43 CFR 3123.1, was therefore defective under the regulation and subject to rejection. 43 CFR 3123.3(b).

The record shows that the adjacent, available land to which the land office referred was the adjoining unsurveyed E½ sec. 11, 320 acres.

The appellant contends in substance that the adjacent lands are excluded from regular leasing because they are withdrawn as a condor sanctuary.

The lands sought, as well as the adjoining E½ sec. 11, are included in Public Land Order 695 dated January 16, 1951 (16 F. R. 581, January 23, 1951), which withdrew certain public lands within the Los Padres National Forest for use as a condor sanctuary under the jurisdiction of the Forest Service, U. S. Department of Agriculture. The order provides that the E½ sec. 11 and the S½ sec. 12, among other lands, may be leased under the mineral leasing laws on the condition that no lessee shall use or invade, for any purpose, the surface of any such lands within one-half mile of a condor nest active within 3 years, without specific authorization from the Forest Service. The order provides further that leases of the lands will be subject to any special stipulations found necessary by the Secretary of Agriculture, with the concurrence of the Secretary of the Interior, to preserve the usefulness of the lands as a condor sanctuary.

Thus, the lands requested by the offeror and the adjacent E½ sec. 11 were available for oil and gas leasing, on the conditions stated, when the subject offer was filed. In the absence of any showing that the subject lease offer comes within any of the exceptions in 43 CFR 3123.1, it was properly rejected since it embraced less than the minimum of 640 acres of available land and there was other adjoining land available for leasing when the offer was filed. Duncan Miller, A-29872 (November 5, 1963).

The decision appealed from is affirmed.

Duncan Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Frances A. Patton
Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION:
Duncan Miller (Certified Mail)
Regional Forester, U. S. Forest Service
Forest Supervisor, Los Padres National Forest
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
GS, Cons Div (3)
Gower Federal Service
Appeals List No. 1
AHO

appeal to Sec affirmed A-30873, 11-28-67

0 89

Mineral Leasing Act for Acquired Lands: Lands Subject to 3211

The Mineral Leasing Act for Acquired Lands does not apply to lands acquired by the United States within the limits of an incorporated city, so it is proper to reject oil and gas lease offers filed for such lands.

Bernard Silver, Riverside 358, etc. (July 24, 1967)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1967 AUG 3 AM 10 00

In reply refer to:
704
Riverside 358
359
360
361

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

July 24, 1967

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Bernard Silver : Oil and Gas
: Acquired Lands

Decisions Affirmed

Mr. Bernard Silver has appealed from separate decisions of our Riverside district and land office each dated January 24, 1967, which rejected his acquired lands oil and gas lease offers Riverside 358-361, inclusive, for the reason that all the lands sought are within the corporate limits of the Cities of Los Angeles, Santa Monica or Beverly Hills, California, and such lands are excluded from operation of the Mineral Leasing Act for Acquired Lands (30 U.S.C. § 352 (1964); 43 CFR 3211.1).

As the same issue prevails in each case, the appellant submitted a consolidated statement of reasons, contending that the cited regulation, 43 CFR 3211.1, did not exclude leasing of acquired lands within the gross exterior boundaries of incorporated cities, but rather was only to prohibit drilling for oil and gas on such lands. He admits that each tract described in the subject offers is within the gross exterior boundaries of a corporate community in Los Angeles County, but he contends that each parcel sought is actually an unincorporated enclave within the larger city. He avers he is willing to accept the oil and gas leases sought with stipulations that development of the tracts will be accomplished only by slant drilling from off-lease sites or by inclusion in a unit agreement subject to concurrence of the Geological Survey. The appellant further contends the Department's holding in Tom Dowlen, A-27724 (November 17, 1958) should be applied to each of his offers here under consideration.

Reading of section 3 of the Mineral Leasing Act for Acquired Lands appears to be dispositive of these appeals. The Act provides that ". . . deposits of . . . oil, . . . gas . . . which are owned or may hereafter be acquired by the United States and which are within the lands acquired by the United States (exclusive of such deposits in such acquired lands as are (a) situated within incorporated cities, towns and villages, national parks or monuments, (b) set apart for military or naval purposes, or (c) tidelands or submerged lands) may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws. . . ." (30 U.S.C. § 352 (1964)).

Offer Riverside 358 is for Reservation Point, a complex of Coast Guard and related facilities of the United States. The other 3 offers seek post office or Federal Building sites. All of the lands were acquired by the United States, and each of the tracts is within an incorporated city.

The appellant has not demonstrated by substantive evidence that the tracts he seeks to lease are not within the categories of lands excluded from the operation of the Mineral Leasing Act for Acquired Lands, supra, nor that the land office decisions are in error in their rejection of the offers pursuant to the pertinent law and regulations.

Accordingly, each of the decisions appealed from is affirmed.

Mr. Bernard Silver is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be computed on the basis of $5 for each lease offer included in the appeal. If the appeal covers all four offers adversely affected by this decision, the total filing fee will be $20. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION:
Bernard Silver (Certified Mail)
Div L&M S&T (4)
Div L&M PM (2)
OPD
GS, Cons Div (12)
Gower Federal Service
Appeals List No. 1
DEH

Oil and Gas Leases: Lands Subject to 3123
Homesteads: Generally 2211

Land which has been patented as a Mexican land grant confirmed in accordance with the act of March 3, 1851, is not subject to application under any of the public land laws, and any such application must be rejected.

Halstead M. Pembroke, Riverside 264 etc. (September 6, 1967)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1967 SEP 20 PM 2 42

In reply refer to:
704
Riverside 264
265

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

September 6, 1967

Certified Mail
Return Receipt Requested

DECISION

Halstead M. Pembroke	:	Homestead
	:	Oil and Gas

Decisions Affirmed

Mr. Halstead M. Pembroke has appealed from separate decisions of our Riverside district and land office dated January 18, 1967, which rejected his homestead application Riverside 264 and his noncompetitive oil and gas lease offer Riverside 265, each filed November 14, 1966, for identical parcels of unsurveyed lands, for the reason that the lands sought were part of the Rancho Santiago de Santa Ana land grant, confirmed by patent issued December 21, 1883.

The appellant contends that the parcel sought is not within the Rancho Santiago de Santa Ana grant but lies south of the southerly line of the Rancho Santiago de Santa Ana grant as patented, and north of the north bank of the Santa Ana River, which parcel is unsurveyed, unpatented public domain. Several plats from county records purporting to support the contention of the appellant accompanied his appeal.

Following his review of the appeal, the Bureau's Chief of Engineering made these comments in a memorandum dated August 11, 1967:

> The two parcels of land described in the oil and gas lease offer are not unsurveyed public lands of the United States. Rather, they are found to lie within the boundaries of the confirmed and patented claim "Rancho Santiago de Santa Ana." Our reasoning is supported by the following facts:
>
> The plat of T. 6 S., R. 10 W., S.B.M., approved June 30, 1890, represents the survey of all lands outside of the private claims. It shows the public lands returned as surveyed in Sections 19, 20, 27, 28, 29, and 34 to be bounded on the north by the right or south bank of the Santa Ana River. The several section lines shown within Rancho San Joaquin and Rancho Santiago de Santa Ana are regarded as blank lines run on the ground for the purpose of projecting the rectangular survey over the public lands and giving sectional identity to the several islands within Newport Bay or Inlet.

The history and the matter of the survey of the Rancho Santiago de Santa Ana is well documented in the Secretary's decision of April 14, 1883, (1 L.D. 213). With the exception of the following portion of the original boundary description, which was compared to the original papers, filed in PLC Docket 578, California, it will not be repeated here.

> "Commencing at the mouth of the river Santa Ana, where it empties into the Sea, thence running up the bends and old bed (caja vieja) of the eastern bank of said river to a point..."
>
> As can be seen by this description, the left or eastern bank of the Santa Ana River was the legal outboundary of the claim, rather than the surveyed lines representing that bank by the Deputy Surveyor. It is a well settled principle that a call for a natural object, such as a river, a creek, the mouth of two streams, a dividing ridge between designated localities, etc. shall control both course and distance (48 L.D. 87, and cases cited therein).
>
> Therefore, in view of the above findings, it is our opinion that title to the subject lands was never in the United States, but passed to the claimants of the Rancho Santiago de Santa Ana through actions of the Mexican Government.

In Rancho Santiago de Santa Ana, 1 L.D. 213 (1883), the Department held:

> Where the boundary of a claim is a river which has [suddenly] changed its course, cutting off a part of the claim, the change does not deprive the claimant of the excised land; the boundary remains where the river ran at the date of the grant. (Syllabus)

Lands in Mexican land grants which have been confirmed by patent pursuant to the act of March 3, 1851 (9 Stat. 631) never became part of the public domain, and any application under the public land laws therefor must be rejected. See Ben McLendon, 49 L.D. 548, rehearing denied, 49 L.D. 561 (1923); John Adams, 51 L.D. 591 (1926); Ada Monika Williams, 52 L.D. 491 (1928); Fred E. Doty, 53 I.D. 361 (1931); Richard P. Woitke, A-27875 (April 2, 1959).

The exhibits submitted by the appellant do not give persuasive support to his contentions. In fact, his Exhibit "E", being Page 17, Book 114, of Assessor's Map of Orange County, California, positively shows Parcel 1 in each of his applications as a part of the Assessor's lot or block No. 7, clearly indicating that the County Assessor has not considered the subject land to be public domain, but as part of the patented Rancho Santiago de Santa Ana.

The decisions appealed from are affirmed.

Mr. Halstead M. Pembroke is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be computed on the basis of $5 for each application or lease offer included in the appeal. If the appeal covers both the homestead application and the oil and gas lease offer, the total filing fee will be $10. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Newton Frishberg
Chief, Office of Appeals
and Hearings

Enclosures 2

DISTRIBUTION

Mr. Halstead M. Pembroke
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Geological Survey, Conservation Division (3)
Gower Federal Service
Appeals List No. 1
DEH

0-1

Mineral Leasing Act for Acquired Lands: Lands Subject to 3211
Oil and Gas Leases: Availability of Lands 3123.9

It is proper to reject a noncompetitive oil and gas lease offer to the extent of lands determined to be within the known geologic structure of a producing oil or gas field prior to the time the offer was filed.

It is proper for a land office to delete from a metes and bounds description in a list posted pursuant to 43 CFR 3123.9 lands that have been determined to be within a known geologic structure of a producing oil or gas field prior to the date of posting of such list, and then to revise the metes and bounds description of the remaining lands subject to noncompetitive oil and gas leasing for inclusion in a lease to be issued to the successful drawee.

Lynette P. DeSmet, Riverside 228 (September 14, 1967)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1967 SEP 28 PM 2 54

In reply refer to:
704
Riverside 228

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

September 14, 1967

DECISION

Lynette P. DeSmet : Oil and Gas
: Acquired Lands
:

Decision Affirmed as Modified

Mrs. Lynette P. DeSmet has appealed from the decision of our Riverside district and land office dated December 19, 1966, which rejected her simultaneous noncompetitive oil and gas lease offer for Parcel 82-16 filed October 24, 1966, to the extent of acquired lands parcels 160 and 161, a portion of the lands comprising Parcel 82-16, for the reason that each of these parcels 160 and 161 is partially within the undefined known geologic structure of the Prado-Corona field, as determined effective September 2, 1966. The decision recited that although the notice of the structure determination was not received until after the lands had been posted as available for noncompetitive leasing, the rejected lands are subject only to leasing by competitive bidding. 43 CFR 3122.1(a). The decision also called for acceptance of special stipulations as a condition precedent to issuance of an oil and gas lease on the remaining 10 parcels comprising Parcel 82-16. 1/

The appellant contends that it is the responsibility of the Bureau of Land Management to describe properly all tracts offered for leasing pursuant to 43 CFR 3123.9, and as the known geologic structure covers only parts of parcels 160 and 161, the Bureau should describe the portions of each parcel not within the known geologic structure and available for noncompetitive leasing, and include them in her lease. She does not question the right of the land office to reject her offer as to lands actually determined to be within the known geologic structure of the Prado-Corona field.

Offer to lease Riverside 228 is the drawing entry card given first priority for Parcel 82-16 set forth in the list of lands posted as available for simultaneous filing of oil and gas lease offers during the period ending at 10 a.m., October 24, 1966. Subsequent to that filing period, the Geological Survey advised the Riverside district and land office of its determination that certain lands, including the unsurveyed N½NW¼ section 17, T. 3 S., R. 7 W., S.B.M., California, are within the known geologic structure of the Prado-Corona field, effective September 2, 1966. According to the record, parcels 160 and 161 of Parcel 82-16 are partially within the said N½NW¼ section 17 (projected). Since the determination of the known geologic structure preceded the filing of the subject

---

1/ The offeror accepted all the special stipulations.

lease offer on October 24, 1966, those portions of parcels 160 and 161 within the known geologic structure of the Prado-Corona field were not available for noncompetitive leasing pursuant to the subject lease offer. It was proper for the land office to reject the lease offer as to these specific lands as the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 352 (1964), authorizes the Secretary of the Interior to issue noncompetitive oil and gas leases only on acquired lands not within any known geologic structure of a producing field. See 30 U.S.C. § 226 (b) (1964). The fact that the lands had been posted as available for noncompetitive leasing does not require that they be leased in that way when it later became evident that the posting notice was in error.

The regulation, 43 CFR 3123.9(c), provides that the offeror, by submitting a drawing entry card, agrees to be bound to a lease on a current form approved by the Director for the described parcel if such a lease is issued to him as a result of the drawing. Similarly, the drawing entry card (Form 4-1664 (May 1964)) notes that the offeror agrees that the successful drawing of the card will bind him to a lease on "Form 4-1158 or Form 4-1196," whichever is applicable, for the described parcel if such a lease should be issued to him by the Bureau of Land Management as a result of the drawing. The lease form in this case file (Form 4-1196, August 1962), in effect when the subject offer was filed, and the current lease form (Form 3200-3, March 1967), both contain a statement in Item 7(b) that "this offer and lease shall apply only to lands not within a known geologic structure of a producing oil or gas field at the time the offer is filed." It is altogether reasonable to say that, by agreeing to be bound by such lease form, the applicant is also bound by this statement. See John J. King, A-30472 (February 28, 1966). It thus follows that the appellant, as the first qualified applicant therefor and all else being regular, is entitled to a noncompetitive lease for the portions of the parcels 160 and 161 which are outside the known geologic structure.

It is appropriate, therefore, to reject this lease offer Riverside 228 only as to those lands of parcels 160 and 161 which are actually within the known geologic structure of the Prado-Corona field for the reason that those lands cannot be leased in response to the offer, and then for the district and land office to revise the metes and bounds description of the remaining lands in the said parcels 160 and 161 of Parcel 82-16 to reflect such deletions. Cf. L. M. Schwartzkopf, A-29072 (November 6, 1962).

The decision appealed from is affirmed as modified herein. The record is returned to the Riverside district and land office for appropriate action consistent herewith. 2/

Newton Frishberg
Chief, Office of Appeals
and Hearings

DISTRIBUTION:
Mrs. Lynette P. DeSmet
Richard P. DeSmet
Robert G. Lynn
Div L&M S&T (4)
Div L&M PM (2)
OPD
GS, Cons Div (3)
Gower Federal Service
Appeals List No. 1
DEH

2/ Assignments of the lease Riverside 228, if issued, for the entire Parcel 82-16 from Mrs. DeSmet to Robert P. Lynn, and from Lynn to Richard P. DeSmet have been filed.

Mineral Leasing Act for Acquired Lands: Consent of Agency 3211.2

Oil and gas lease offers for acquired lands are properly rejected where the Atomic Energy Commission, having jurisdiction over the lands, has withheld its consent to the issuance of leases on the basis that drilling and production operations would be incompatible with the primary purposes for which the lands were acquired.

Trico Oil and Gas Company, S-409 etc. (September 29, 1967)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In Reply Refer to:
704
S-409
419

September 29, 1967

CERTIFIED MAIL
RETURN RECEIPT REQUESTE

DECISION

Trico Oil and Gas Company	:	Oil and Gas Acquired Lands

Decision Affirmed

Trico Oil and Gas Company has appealed from the May 4, 1967, decision of the Sacramento land office, to the extent it rejected the above-identified oil and gas lease offers for acquired lands in T. 3 S., R. 4 E., M.D.M., California. The decision held that the Atomic Energy Commission, the agency having administrative jurisdiction over the lands, determined that drilling and production operations would be incompatible with the primary purposes for which the lands were acquired and withheld consent to the issuance of leases for these lands (30 U.S.C. § 352 (1964)).

The appellant asserts its belief that a test well could be drilled in the area of its lease offers in such a way as not to interfere with AEC operations. It states it wrote to AEC requesting to confer with it on the subject of leasing of the lands, and having received no reply, assumed AEC would have no objection to its lease offers. Further the appellant asserts that the rejection of its offers is discriminatory in that lease Sacramento 080131 was issued for similarly withdrawn, adjoining lands.

The record shows the lands in issue were acquired for AEC purposes under the Atomic Energy Act of August 30, 1954 (42 U.S.C. § 2011 et seq.). In reporting on the appellant's offers in March 1967, the AEC stated that the lands sought are within its Lawrence Radiation Laboratory Site 300, a test area, and within the shrapnel areas of the firing bunkers and security control areas; and that drilling and production operations would be incompatible with these uses.

Section 3 of the Mineral Leasing Act for Acquired lands, cited above and in the land office decision, expressly provides that no mineral deposit subject to the act shall be leased except with the consent of the head of the agency having jurisdiction over the lands containing such deposits. Therefore, since AEC has withheld its consent to leasing lands in the Lawrence test area, this Bureau is without authority to lease the oil and gas deposits in these lands. Accordingly, the lease offers were properly rejected. Duncan Miller, A-29897 (November 19, 1963).

Contrary to the appellant's assertion, the record shows that oil and gas lease Sacramento 080131, which was issued effective February 1, 1966, involves public domain lands only and not acquired lands. The lease was issued pursuant to the Mineral Leasing Act of 1920, as amended (30 U.S.C. § 181 et seq. (1964)). The records do not disclose that these public domain lands were included in any withdrawal for the AEC; hence, issuance of the lease was not subject to consent requirements by the AEC.

The appellant has not shown error in the decision appealed from. The decision is affirmed.

Trico Oil and Gas Company is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be computed on the basis of $5 for each lease offer included in the appeal. If the appeal covers both offers adversely affected by this decision, the total filing fee will be $10. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed, the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION:

Trico Oil and Gas Company (Certified Mail)
Atomic Energy Commission, Washington, D. C.
Atomic Energy Commission, San Francisco Operations Office, Berkeley, California.
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Geological Survey, Conservation Division (6)
Gower Federal Service
Appeals List No. 1
AHO

Oil and Gas Leases: Noncompetitive Leases 3123

A drawing entry card lease offer for oil and gas from a corporate offeror is properly rejected when the offer is not accompanied by the required showing of the qualifications of the corporation to take and hold the interest sought or by a reference to where the information has earlier been filed in the land office, nor by evidence of the authority of the person signing the offer for the corporation.

Merchants Petroleum Company, S-497 (October 5, 1967)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1967 OCT 20 AM 10 00

In reply refer to:
704
S 497

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

October 5, 1967

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Merchants Petroleum Company : Oil and Gas
:

Decision Affirmed

Merchants Petroleum Company has appealed from a decision of our Sacramento land office dated April 20, 1967, which rejected its drawing entry card lease offer S-497 for the reason that the offer was not accompanied by evidence of the corporate offeror to take and hold the interest sought under the Mineral Leasing Act (30 U.S.C. §§ 181 et seq. (1964)), nor by a reference to a case record where the showing had been previously filed, and further because there was no evidence presented authorizing Thomas W. Barach to sign as Vice-President for Merchants Petroleum Company, 43 CFR 3123.2(g).

On May 9, 1967, prior to filing of this appeal, Merchants filed an "Amended Statement of Qualifications" in which it was stated that a showing of the qualifications of Merchants Petroleum Company has heretofore been made in connection with Sacramento 073201, and which attempted retroactively to affirm the action of Thomas W. Barach, a Vice-President of Merchants in connection with the subject lease offer.

In the statement of reasons for the appeal, Merchants admits that the subject drawing entry card, signed by Thomas W. Barach, as Vice-President of Merchants Petroleum Company, was not accompanied by a statement of the qualifications of Merchants, nor by a reference to where such statement might have been found, and refers to the Amended Statement received in the Sacramento land office on May 9, 1967, in which affirmation was given to the action of Barach as a Vice-President of the company. The statement also referred to earlier actions in other oil and gas leases before the Sacramento land office where Mr. Barach had signed as Vice-President of Merchants without any question by the land office. The appellant contends that its omission of evidence of or reference to its corporate qualifications and the authority of Thomas W. Barach did not compel rejection as the regulatory requirement for such showing is not mandatory, citing Madison Oils, Inc., Wyoming 0310141 (August 12, 1964); Amarillo Oil Company, Wyoming 0309257 (September 4, 1964); and Saint Helens Petroleum Corporation, Wyoming 0309466 (April 13, 1965), in support of its position. The appellant also noted Sun-Tex Petroleum Co., Utah 059327 (April 24, 1961), and King-Stevenson Gas and Oil Co., Fairbanks 034429 (July 19, 1966) to the contrary. The appellant argues that it made substantial compliance with the regulation because evidence of its corporate structure was on file in the Sacramento land office, and only evidence of the authority of Barach to sign as a Vice-President was lacking, so that Merchants should be allowed to complete the necessary showing without loss of priority.

The facts are simple and uncontroverted. A drawing entry card (Form 4-1664, May 1964) for Parcel No. 2 (March 1967 list (43 CFR 3123.9)) was filed in the name of Merchants Petroleum Company, signed by Thomas W. Barach, Vice-President. Notwithstanding that the card bore this legend: "NOTE: Compliance must be made with the provisions of 43 CFR 3123.2" it was not accompanied by the required evidence of or reference to the corporate qualifications of Merchants Petroleum Company, nor of the authority of Thomas W. Barach to sign as Vice-President of the company.

The cases cited by Merchants in support of its argument each relate to situations involving an earlier edition of Form 4-1664, on which there was some ambiguity of language relating to what evidence must accompany a corporate filing. As each of the three cases involved land in the State of Wyoming and as each of the companies affected had earlier filed in the Wyoming land office all the necessary evidence required by 43 CFR 192.42(f), now 43 CFR 3123.2(g), it was held to be inequitable to reject those offers.

The argument of Merchants is not persuasive as its situation in this case is not similar to the situation presented in each of the cited cases, where all necessary evidence of corporate qualifications and of the authority of the person who signed had earlier been filed in the same land office.

With amendment of the drawing entry card to eliminate the apparent ambiguity which earlier prevailed, the Department has held consistently that failure to comply with the mandatory requirements in the regulations compels rejection without priority. See King-Stevenson Gas and Oil Co., supra, and Virgil V. Peterson, A-30685 (March 30, 1967), which case relates to phosphate, another mineral leasable under the Mineral Leasing Act.

The decision appealed from is affirmed.

Merchants Petroleum Company is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Frances A. Patton
Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

Dist. on page 3

DISTRIBUTION:
Rodney C. Hill, Attorney for Appellant (Certified Mail)
Merchants Petroleum Company
Div L&M S&T (4)
Div L&M PM (2)
OPD
GS, Cons Div (3)
Gower Federal Service
Appeals List No. 1
DEH

Oil and Gas Leases: Rentals 3125.1

An oil and gas lessee is required to pay increased rental, as provided in the lease terms, where a portion of his lease has been determined by the Geological Survey to be situated within the known geologic structure of a producing oil or gas field.

E. Rodney Powell, Riverside 06298 (January 12, 1962)

Oil and Gas Leases: Rentals 3125.1

An oil and gas lessee is required to pay increased rental, as provided in the lease terms, where a portion of his lease has been determined by the Geological Survey to be situated within the known geologic structure of a producing oil or gas field.

E. Baden Powell, Riverside 02298 (January 12, 1968)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1968 JAN 18 AM 10 00

In reply refer to:
704
Riverside 02298

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

January 12,1968

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

E. Baden Powell : Oil and Gas
:

Decision Affirmed

E. Baden Powell has appealed from the August 29, 1967, decision of the Riverside district and land office, holding that based upon the classification by the Geological Survey of an undefined addition to the Topatopa-Fourfork field, effective June 8, 1967, a portion of the above-identified oil and gas lease (Lot 7 sec. 33, T. 5 N., R. 19 W., S.B. Mer., California) is within the known geologic structure of the field, and consequently that annual rental of $2 per acre or fraction thereof will be due and payable on the lease beginning June 1, 1968 (43 CFR 3125.1(b)(1)).

The appellant states he is agreeable to paying the increased rental on lands in the leasehold which lie outside of the Condor Refuge, which lands he may enter upon, and on those lands inside the Refuge which he can reach by directional drilling from sites outside of the Refuge. He objects, however, to paying the increased rental on leased lands within the Refuge which he states he is not authorized to enter and which cannot be reached by whipstock drilling. The appellant states he is denied access to certain lands within the Refuge due to distances and to leases intervening between available drill sites and the leased lands.

The obligation of the lessee to pay rental under the leasehold is not conditioned upon the availability of the leased lands for entry or drilling. The lease terms provide in section 2(d)(1)(b)(i) that the lessee agrees to pay the lessor in advance an annual rental at the rate of $2 per acre on the entire lease, beginning with the first lease year after notice that the leased lands are wholly or partly within a known geologic structure. The appellant has not questioned such classification of a portion of the leasehold. There is no authority in law or regulation for any lesser rental rate for a portion of a leasehold, as urged by the appellant.

The appellant has presented no evidence that the increased rental rate is in error. Duncan Miller, A-30628 (November 16, 1966).

The decision appealed from is affirmed.

E. Baden Powell is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed, the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures

DISTRIBUTION:
E. Baden Powell (Certified Mail)
Regional Forester, Forest Service, U.S. Department of Agriculture
Forest Supervisor, Los Padres National Forest
Forest Service, Div. of Watershed Mgmt., U.S. Dept. of Agriculture (12)
Div L&M S&T (4)
Div L&M PM (2)
OPD
GS, Cons Div (3)
Gower Federal Service
Appeals List No. 1
AHO

Oil and Gas Leases: Rentals 3125.1

An oil and gas lease subject to the Act of July 29, 1954 (30 U.S.C. §188(b) (1964)), is properly declared to be terminated when the payment for the advance rental is not received on or before the anniversary date of the lease.

A land office billing notice impressed with a land office receiving stamp is not evidence that the bill has been paid without specific endorsement that the rental payment has, in fact, been received.

Richard P. DeSmet, Riverside 05646 etc. (February 27, 1968)

In reply refer to:
704
Riverside 05646
06989
R 218
R 219

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D. C. 20240

February 27, 1968

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Richard P. DeSmet : Oil and Gas
:

Decision Affirmed

Mr. Richard P. DeSmet has appealed from a decision of our Riverside district and land office dated November 29, 1967, which dismissed his protest against termination of noncompetitive oil and gas leases Riverside 05646, Riverside 06989, R 218 and R 219, for failure to pay the annual rental due on or before the anniversary date of November 1, 1967 (30 U.S.C. §188 (1964)), and which denied reinstatement of the leases. DeSmet had protested, on November 14, 1967, the termination of the leases, alleging that he held receipts for payment of the required rentals for each lease. At that time he also submitted payment of the required rentals and requested reinstatement of the leases.

On appeal, DeSmet reiterates his original protest against the terminations and purports to support his allegation that he has receipts from the land office for payment of the rentals due November 1, 1967, for each lease by tendering copies of the billing notices for the subject leases, each stamped with the legend "Received - Sept. 22 - 10:00 AM - '67 - Land Office, Riverside, California." He accompanied his appeal with copies of other billing notices for oil and gas leases in the Riverside district and land office which had been paid and suggested that the similar land office date stamp impressed on them lulled him into the belief that the current billing notices represented actual receipts showing that the required rentals had been paid timely.

He contends he was misled by the action of the land office employees in this matter, that is, by their placing the same type receiving stamp on the billing notices as they had stamped other billing notices actually paid. He denies that the "stamped" billing notices for the leases subject to this appeal had been returned to him by the land office with a note that no payments had been received. It must be observed the appellant does not allege that he paid the rentals, or even tendered the requisite payments. In fact, he admits that he does not have a cancelled check representing such payment.

The record shows that the subject oil and gas leases were issued as follows: Riverside 05646, November 1, 1964; Riverside 06989, November 1, 1965; R 218 and 219, November 1, 1966, Each lease is subject to the automatic termination provisions contained in section 31 of the Mineral Leasing Act, as amended (30 U.S.C. §188 (1964)).

It appears that on September 21, 1967, the appellant transmitted the billing notices for the four subject leases together with other documents relating to the September simultaneous oil and gas filings to the Riverside district and land office. These papers were received in the land office on September 22, and were so stamped by the land office receiving clerk. The land office clerks claim that no check or other payment accompanied the billing notices, so the billing notices were returned to DeSmet with a note advising him that "no check was received as payment of the rental on these leases." DeSmet denies receiving such information with the "stamped" billing notices.

The appellant asserts that he checked the case file for lease R 219 several times to assure himself that the rental payment due November 1, 1967, had been paid. There is no evidence of payment of this rental in the case file, nor any other document which might reasonably be construed as evidence that the rental had been paid. Absence of such evidence of payment of the rental due November 1, 1967, should surely have alerted the appellant to raise some pertinent question to the land office personnel, especially if he was of the opinion that the rental payment had been made.

Examination of the copies of the billing notices submitted by the appellant does not show any indication that they have been endorsed as receipts for payment of the required rentals. That some billing notices earlier may have been returned to the appellant after he had paid the indicated rental, with only the land office receiving stamp impressed thereon does not create a reasonable supposition that the land office receiving stamp is equivalent to a "Paid" stamp. Indeed, several of the ancillary exhibits submitted by the appellant reflect the written endorsement "Payment Received" on the billing notice.

The argument of the appellant that he construed the subject billing notices as receipts is not persuasive.

DeSmet has not submitted any evidence to establish that any of the rental payments was actually or presumptively received in the land office on or before November 1, 1967, the anniversary date for each lease.

Termination of an oil and gas lease subject to Section 31 of the Mineral Leasing Act, as amended, supra, is required for failure to pay the annual rental in advance not later than the anniversary date of the lease. M. B. Dreblow, A-30723 (April 18, 1967). Tender of the overdue rental payment after automatic termination of a lease for failure to pay rent cannot continue or reinstate the lease. Paradox Minerals, Inc., A-28000 (August 5, 1959).

As timely payment of rental was not made for any of the subject leases, Riverside 05646, Riverside 06869, R 218 or R 219, each of them was properly found to have terminated by operation of law pursuant to section 31 of the Mineral Leasing Act, supra. There is no authority for reinstatement of any of these leases. See M. B. Dreblow, supra.

The action by the land office is in accordance with the law and the precedent decisions of the Department of the Interior, and the decision appealed from is affirmed.

Mr. Richard P. DeSmet is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be computed on the basis of $5 for each lease included in the appeal. If the appeal covers all four leases adversely affected by this decision, the total filing fee will be $20. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION:
Richard P. DeSmet (Certified Mail)
Div L&M S&T (4)
Div L&M PM (2)
OPD
GS, Cons Div (12)
Gower Federal Service
Appeals List No. 1
DEH

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1968 MAY 2 AM 10

Oil and Gas Leases: Applications--Noncompetitive 3123.2

An oil and gas lease offer is properly rejected when it is not accompanied by the required statement of interest of the parties and the showing of qualifications of the additional party named, and where such showings are not filed within the 15-day period allowed by regulation 43 CFR 3123.2(c)(3).

Floyd E. Paxson, Mary C. Paxson, R 1234 (March 25, 1968)

In reply refer to:
704
R 1234
March 25, 1968
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

DECISION

Floyd E. Paxson :
Mary C. Paxson : Oil and Gas
:

Decision Affirmed

Mrs. Mary C. Paxson has appealed for herself and for Mr. Paxson from the February 13, 1968, decision of the Riverside district and land office, which rejected their above-identified oil and gas drawing entry card lease offer which drew first priority for the lands described in it. The offer was rejected for the reason that it was signed by Floyd E. Paxson as offeror, and stated on its reverse side that Mary C. Paxson was a party in interest in the offer and lease, if issued; however, the offer was not accompanied by, and there was not filed within 15 days after the filing of the lease offer, a separate statement signed by the offeror and the additional party, setting forth the nature and extent of the interest of each in the offer, an explanation of the nature of the agreement between them, if oral, or a copy of such agreement, if written, and evidence of Mrs. Paxson's qualifications to take and hold such lease interest, as required in 43 CFR 3123.2(c)(3).

The appellants do not refute the holding of the land office but profess they were unaware of the requirements of the cited regulation. They urge that the name of the additional party be deleted from the back of the card offer and that the lease be issued to Mr. Paxson.

The land office was confined to being advised by the statements of the offeror in this offer. If error was committed by him in preparation of the offer, the Department can acknowledge a correction of his error but it cannot correct it retroactively to the detriment of others. When Mr. Paxson filed his offer, he stated that Mary C. Paxson was also a party in interest. Therefore, the land office correctly ruled that the required statements were not filed in time, and properly rejected the offer. Timothy G. Lowry, A-30487 (March 16, 1966).

It is clear from the regulation 43 CFR 3123.9(c)(3) that an offeror acquires no vested right to a lease merely because his offer is drawn in the simultaneous filing drawing procedure. The drawing simply establishes which offer will be considered; it does not constitute a determination that the offer so drawn is valid or that any defect in such offer may be waived. A defective offer drawing priority must be rejected. George N. Keyston, Jr., Ltd., 70 I.D. 156 (1963). A lease offer initiates only an inchoate right to a lease;

it is not a vested right. The offer must be valid and complete if a lease is to be issued, i.e., it must meet all mandatory requirements of the regulations, including the requirement for a timely showing that the parties in interest in the offer and lease, if issued, are qualified under the law to take and hold the lease sought.

The decision appealed from is affirmed.

Floyd E. Paxson and Mary C. Paxson are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed, the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION:
Mr. Floyd E. Paxson, Mrs. Mary C. Paxson (Certified Mail)
Div of L&M-S&T (4)
Div of L&M-PM (2)
OPD
GS, Cons Div (3)
Gower Federal Service
Appeals List No. 1
AHO

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1968 APR 22 AM 10 00

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D. C. 20240

In Reply Refer to:
704
S-360
S-362 APR 18 1968
S-399

Oil and Gas
Acquired Lands

DECISION

Standard Oil Company of California **E. C. Brown** **Conrad Grenfell**	:	Withdrawal of Appeal ☒ Filed: April 12, 1968 Relinquishment of Interest in Case ☐ Filed:

Appeals Dismissed

In view of the withdrawals ~~relinquishment~~ noted above, the appeals to the Director, Bureau of Land Management, in ~~this~~ these matters ~~is~~ are dismissed. The case files are returned with a copy of this decision to our State Director for further appropriate action.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

cc: E. C. Brown
Conrad Q. Grenfell
Manager, San Francisco Operations Office
Atomic Energy Commission
Attn: OCC-TIC
SD (Calif)
LO (Sacramento) ✓
DDRF 1, 2, 3
Ap & He RF
Each case file
Binder
DEH
704:DEHenriques:jhb 4/18/68

appealed to Sec
A- 31020

Oil and Gas Leases: Generally 3120

> It is proper to reject an oil and gas lease offer for an alleged hiatus where the Department has several times earlier ruled that the hiatus does not exist, and where the applicant has not adduced any factors not previously considered by the Department.

Signal Oil and Gas Company, R 890 (May 11, 1968)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1968 JUN 24 AM 10 00

In reply refer to:
704
R 890

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

May 11, 1968

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Signal Oil and Gas Company : Oil and Gas
:
:

Decision Affirmed

Signal Oil and Gas Company has appealed from a decision of our Riverside district and land office, dated October 9, 1967, which rejected its oil and gas lease offer R 890 for certain lands described by metes and bounds and alleged to be an unsurveyed hiatus between the west line of Ts. 11, 12 N., R. 19 W., and the east line of Ts. 11, 12 N., R. 20 W., S.B.M., California, comprising approximately 750 acres. The decision held that no hiatus exists between the surveyed townships named, and consequently there are no unsurveyed public lands, as alleged and described in the offer, available for oil and gas leasing. The land office decision was predicated upon the ruling of the Department in the case of *Malcolm McDuffie*, A-26907 (August 6, 1954), which was concerned with the same alleged hiatus.

The appellant contends that the unsurveyed public lands do, in fact, exist as described in its application, and in support of its contention has submitted various exhibits, including certified copies of plats of a private survey performed in 1966 which purport to show the lands in issue. The appellant asserts that similar authenticated evidence was not available to the Department when it gave its decision on *William L. Jackson, et al.*, A-2079 (January 12, 1922), *(motion for rehearing denied March 2, 1922)*, on which the *McDuffie* decision was based.

The Chief, Division of Engineering of this Bureau, has reviewed the showing submitted by the appellant. He reported that while the appellant's exhibits show the west range of sections in both Ts. 11 and 12 N., R. 19 W., to be excessive in east-west dimensions, this alone is not significant inasmuch as the excess in this case has been of record since 1921, when it was first brought officially to attention in the case of *William L. Jackson, et al., supra*, which affirmed the decision dated August 6, 1921, of the former General Land Office (predecessor to the Bureau of Land Management) that there were no unsurveyed lands in existence as claimed. The Chief, Division of Engineering, stated that the excess in this case was largely deducible from the record after the range line between Ts. 11, 12 N., Rs. 19, 20 W., was resurveyed by J. R. Glover in 1875, and that the excess has been a matter of official record since 1921 when it was a factor taken into account in the *Jackson* decision which held that no hiatus exists in the area.

The history of public land surveys in the subject area is contained in the decision of the former General Land Office, "E" 998981, LA 033986-033987 (August 6, 1921), on an appeal by William L. Jackson et al. We quote from that decision:

> Township 11 N., R. 19 W., was fully subdivided by G. H. Thompson, D.S., in 1862, and the plat thereof was approved February 3, 1863. The exterior boundaries of the township had all been established in 1854, by R. W. Norris, D.S., who had also established the fractional boundaries of the adjacent townships. Deputy Thompson also subdivided the lands in these adjacent townships to the extent to which Norris had established their exteriors. Both of these deputies followed the practice of surveying the lines which covered only the level lands, stopping their surveys wherever the foot of the mountains was encountered.
>
> Deputy Thompson, prior to his subdivision in Ts. 10 and 11 N., Rs. 19 and 20 W., and T. 11 N., R. 21 W., had established the boundaries of the Rancho El Tejon in the eastern part of Ts. 10 and 11 N., R. 19 W., * * * .
>
> Deputy Thompson then proceeded with his subdivision of the level lands, closing his surveys on the boundaries of the ranches just previously established by himself and on the township exteriors established by Norris.
>
> Under a contract dated January 21, 1875, John A. Benson and James R. Glover, U.S. Deputy Surveyors, extended Thompson's surveys in Ts. 10 and 11 N., R. 20 W., and T. 11 N., R. 21 W., completing the surveys in Ts. 11, and adding to T. 10 about 9,000 acres. Benson and Glover reported difficulty in finding corners of the former surveys upon which to initiate and close their surveys; * * *, they found an irrelation from the condition which should have obtained according to Thompson's survey, amounting to about 34 chains in latitude and 20½ chains in departure. The conclusion reached by them, as appears in the field notes filed by Glover, was:
>
> > Having fully established the correctness of the N.W. cor. of the Rancho Castac and as the topography on my random line running east agrees substantially with that given in the field notes, I concluded that the temporary corners set on this line are correct or nearly so to the corner to Secs. 24, 25, 19 and 30, on west boundary of T. 11 N., R. 19 W., and that I will establish them as permanent. I also concluded to establish the cor. to Tps. 10 and 11 N., Rs. 19 and 20 W.,

> by commencing at the N.W. cor. of the Rancho Castac and running east 40 chs., thence north 160 chs., and to run a random line from said corner to the cor. to Secs. 24, 25, 19 and 30, on west boundary of Tp. 11 N., R. 19 W. This I do pursuant to instructions from the office.
>
> * * *
>
> Deputy Glover then proceeded as indicated, establishing the line between the corner of Secs. 19, 24, 25 and 30 on the west boundary of T. 11 N., R. 19 W., and the corner of Tps. 10 and 11 N., Rs. 19 and 20 W., both as reestablished by him. * * *
>
> Whatever may be said at this time as to the method adopted by Glover to relate the evidence of survey which he accepted as controlling, it is a fact that his judgment was accepted and his plats were filed as the basis for the disposal of the lands represented thereon. It is not at all clear how it could be expected at this date that any other method of handling the situation should be invoked to identify the lands surveyed by him and disposed of in accordance with the results consequent upon his procedure.
>
> * * *
>
> Practically all of the lands adjoining the west and south boundaries of T. 11 N., R. 19 W., have long since been disposed of in accordance with the plats thereof, and there has been nothing definitely presented by the applicants to show the existence of the land which they allege as unsurveyed. To demonstrate that a hiatus exists, it is necessary that a showing be made whereby the evidences of survey will be indicative of the fact that the surveys have omitted to include a tract of land actually in existence. No such showing has been made in the case under discussion, * * *.

The appellant has adduced plats of the County Assessor of Kern County which show that the west line of T. 11 N., R. 19 W., is coincident with the east line of T. 11 N., R. 20 W., and also that the west line of T. 11 N., R. 19 W., is coincident with the east line of T. 11 N., R. 20 W. This also is the position of this Bureau.

Likewise, the plat of the survey made by Maurice E. Lafferty, and submitted by the appellant, shows a common range line between Ts. 11, 12 N., Rs. 19, 20 W., with no indication that the west line of R. 19 W., is at any point not coincident with the east line of R. 20 W.

If the argument of the appellant that an hiatus exists is to have any merit, it surely must be required to present evidence that the west line of R. 19 W., is not coincident with the east line of R. 20 W., and that the section corners for the west line of R. 19 W., are in place on the ground at positions east of and not coincident with those on the east line of R. 20 W. An hiatus cannot be said to exist unless it can be shown that two lines exist on the ground.

It must be held that the appellant has not presented any new evidence to support its claim of an hiatus. The presentation it made consists of evidence earlier considered by the Department and discarded. Accordingly, the decision appealed from is affirmed.

Signal Oil and Gas Company is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Frances A. Patton
Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION
Fred Immergluck, Attorney for Appellant (Certified Mail)
Signal Oil and Gas Company
Div L&M S&T (4)
Div L&M PM (2)
OPD
GS, Cons Div (3)
Gower Federal Service
Appeals List No. 1
DEH

Oil and Gas Leases: Generally 3120

It is proper to require one making an oil and gas lease offer to consent to stipulations required by the public land order controlling the use and disposition of the land applied for.

Duncan Miller, R 1098 (May 28, 1968)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1968 JUN 24 AM 10 00

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In reply refer to:
704
R 1098
May 28, 1968

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Duncan Miller : Oil and Gas
:
:

Decision Affirmed

Duncan Miller has appealed from a decision of our Riverside, California, land office, dated February 5, 1968, which required him, as a condition precedent to the issuance of a lease pursuant to his oil and gas lease offer R 1098, to execute certain stipulations which were requested by the Forest Service, United States Department of Agriculture.

The lands in the lease offer are included in Public Land Order 695 dated January 16, 1951 (16 F.R. 581, January 23, 1951), which withdrew certain public lands within the Los Padres National Forest for use as a condor sanctuary under the jurisdiction of the Forest Service, United States Department of Agriculture. The order provides that certain lands, including those in the subject lease offer, may be leased under the mineral leasing laws on the condition that no lessee shall use or invade, for any purpose, the surface of any such lands within one-half mile of a condor nest active within 3 years, without specific authorization from the Forest Service. The order provides further that leases of the lands will be subject to any special stipulations found necessary by the Secretary of Agriculture, with the concurrence of the Secretary of the Interior, to preserve the usefulness of the lands as a condor sanctuary.

Among the several stipulations which Mr. Miller was required by the land office to execute, the one to which he has taken exception is the one that was agreed upon by the Secretary of Agriculture and the Secretary of the Interior to be necessary to preserve the usefulness of the lands reserved by Public Land Order 695 as a condor sanctuary.

In his appeal Miller states that the stipulation refers to condor nests and restricts activities for a distance of one-half mile from the nests, contending "however, there is no showing that there is, in fact, such nests in the area. It would seem, therefore, if there were, they should be delineated so that the lessee would know on what areas of the leased lands he could operate; also the question of a nest being subsisting is not taken into consideration." In other words, the essence of his contentions is that the stipulation should be clarified, modified or relaxed.

In 1963 the Department considered and rejected similar contentions raised by Miller, holding that the stipulation was clear, and that no lease would be issued covering the land in the condor sanctuary unless he agreed to the conditions. See Duncan Miller, A-29701 (November 15, 1963). Also, see Duncan Miller, A-30713 (November 21, 1966).

Accordingly, the land office decision is affirmed, and, unless the appellant executes and files the stipulation within 30 days from receipt of this decision, offer R 1098 will be finally rejected without further notice.

Duncan Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D.C. 20240 and the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Frances A. Patton
Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures (2)

DISTRIBUTION

Mr. Duncan Miller (Certified Mail)
Regional Forester, Forest Service, U. S. Department of Agriculture.
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Gower Federal Service
Appeals List No. 1
PLS

Protests: Generally 1852.1-2

A person who avails himself of the privilege of submitting a grievance to the Bureau of Land Management for adjudication is properly required to assume the burden of pointing out clearly the basis of his claim that error detrimental to him has been committed; and, if his appeal or protest is so vague as to fail to accomplish this purpose, it will be dismissed.

Oil and Gas Leases: Generally

The holder of an oil and gas lease issued under section 17 of the Mineral Leasing Act, as amended, does not have the right to extract the minerals enumerated in section 21 of that act, and a protest against alleged impairment of his rights on such basis is properly dismissed.

Duncan Miller, LA 0169820 (August 8, 1968)

In reply refer to:
704
LA 0169820

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

August 8, 1968

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Oil and Gas

DECISION

Duncan Miller :
:

Appeal Dismissed
Protest Dismissed

Duncan Miller filed a document dated April 20, 1968, styled "NOTICE OF APPEAL WITH REASONS" in the matter of LA 0169820, which reads:

> The Decision is totalitarian and refuses to face the FACTS AS OUTLINED IN THE PROTEST AND APPEAL. It is pointed out that in this office things have been especially arranged for special interests; yet, no regard is given to the public interest in a lease contract."

It was followed by a further document labeled "ADDITIONAL NOTICE OF APPEAL AND REASONS," dated April 25, 1968, which states:

> The Riverside Land Office states, 'There was no adverse decision made with respect to oil and gas lease LA 0169820 which terminated April 1, 1968, due to non-payment of the rental.'
>
> This statement is clearly totalitarian as stated in the Appeal of April 20, 1968. The Decision that there is no decision in denying the right to reform the contract is appealable, despite the efforts that seem to be continuous to suppress justice and fair dealing.

The record shows that on April 8, 1968, Mr. Miller had filed in the Riverside land office a letter dated March 25, 1968, designated "PROTEST AND APPEAL" and referenced "IN THE MATTER OF OIL AND GAS LEASE: LA 0169820," which contended:

> The captioned lease constitutes lease contracts and under § 1 of the lease, the rights granted have been taken away from the lessee by various, ambiguous rulings, specifically with respect to the taking * * * of oil substances capable of giving up oil.
>
> Consequently, lessee wishes new lease with clarified lease terms and credit of monies paid on the old lease applied on the new lease.

In response to Mr. Miller's letter the land office wrote to him on April 19, 1968, stating, in substance, that the lease terminated by operation of law on April 1, 1968, because the seventh year's rental, due and payable on or before that date, was not paid, and that by reason of the termination, all rights under the lease have expired.

As a consequence of oil and gas lease LA 0169820 having terminated for nonpayment of rental on or before April 1, 1968, which was prior to the receipt in the land office of Mr. Miller's so-called "protest and appeal" on April 8, 1968, there was no longer a lease in existence for the land office to consider. Mr. Miller had exclusive oil and gas rights under the lease for six years. The rentals have been earned, and there is no provision for their return.

Mr. Miller's question is vague. If by reason of his mention of section 1 of the lease terms and rights to substances capable of giving up oil he had in mind the issue of whether the holder of oil and gas leases issued under section 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226 (1964), has the right to extract the minerals enumerated in section 21 of the act, as amended, 30 U.S.C. § 241 (1964), this issue was decided against Miller in several cases, and his protests were dismissed. It was held that the holder of an oil and gas lease issued pursuant to section 17 of the Mineral Leasing Act has no right to extract oil from deposits of native asphalt, solid and semisolid bituminous rock. Duncan Miller, 73 I.D. 211 (1966), Duncan Miller v. Udall, Civil No. C-167-66, D. Utah, dismissed with prejudice, April 17, 1967; Duncan Miller, A-30566 (August 11, 1966); Duncan Miller, A-30587 (August 25, 1966); Duncan Miller, A-30712 (November 25, 1966).

It is the duty of a protestant and an appellant to state the precise grounds upon which a ruling or reversal of a decision is sought. Although no particular form is required, a protest or statement of reasons for appeal must be such that it indicates clearly the alleged grounds for errors of law or fact, or both. The Bureau of Land Management has no obligation to scrutinize the record to determine whether any possible error might have been made. A person who avails himself of the privilege of submitting his grievance to the Bureau for adjudication is properly required to assume the burden of pointing out clearly the basis of his claim that error detrimental to him has been committed; and, if his protest or appeal is so vague as to fail to accomplish this purpose, it will be dismissed. Cf. Edward G. Gee, A-30042 (August 23, 1963).

Accordingly, the so-called appeal and protest are dismissed.

Mr. Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed

with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving wherein the decision appealed from is in error.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures

DISTRIBUTION:
Mr. Duncan Miller (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
GS, Cons. Div. (3)
Gower Federal Service
Appeals List No. 1

appeal to Sec A-31081 — 5-15-69
Reversed & Remanded

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1968 OCT 21 AM 10 00

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D. C.

IN REPLY REFER TO:
704
S-1688
Oil and Gas

OCT 17 1968

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Duncan Miller :

Appeal From Decision of
August 1, 1968

Notice of Appeal Filed
September 9, 1968

Appeal Dismissed

For the reason listed below your appeal to the Director, Bureau of Land Management, is hereby summarily dismissed (43 CFR 1840.0-7):

☐ No statement of reasons has been filed in support of the appeal, and the time for filing the statement has expired (43 CFR 1842.5-1).

☐ Your statement of reasons for your appeal (or your request for extension of time to file a statement of reasons) was filed in this office, but it was filed late. (43 CFR 1842.5-1) The statement of reasons was transmitted to this office after expiration of the period allowed, and the delay in filing cannot be waived. (43 CFR 1840.0-6(b))

☐ You have not served the adverse party named in the decision appealed from with a copy of ☐ the notice of appeal, and/or ☐ the statement of reasons for the appeal, in the manner prescribed in 43 CFR 1840.0-6(e). (43 CFR 1842.5-2)

☒ Your appeal does not point out wherein the decision appealed from is believed to be in error and consequently you have failed to state reasons for the appeal, as required by the appeals procedures. See Duncan Miller, 65 I.D. 290. The reasons stated for the appeal are irrelevant to the issue in the decision appealed from.
The dismissal of an appeal for failure to comply with the above requirements is mandatory. We have enclosed Circular 2137 which contains the cited regulations.

You are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in enclosed Form 1844-1 and Circular 2137. 1/ If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. In taking an appeal there must be strict compliance with the regulations. If you do not appeal we will close the case and return the record to our State Director for further appropriate action. If an appeal is taken, the filing fee is $5.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

1/ The adverse party to be served is: U. S. Royalty Oil Corporation
117 West 9th Street, Los Angeles, California 90015.

46571

appeal to Sec
affirmed A-31087 - 2-4-70

Oil and Gas Leases: Termination 3129

An oil and gas lease is automatically terminated under section 31 of the Mineral Leasing Act, as amended by the act of July 29, 1954, when the rental is not paid in full on or before the due date, and there is no well capable of producing oil or gas in paying quantities within the leasehold.

Oil and Gas Leases: Availability of Lands 3123.9 (October 21, 1968)

It is proper to post as available for simultaneous filing of oil and gas lease offers pursuant to 43 CFR 3123.9, land which was in an oil and gas lease for which the rental was not paid in full on or before the due date.

Duncan Miller, Sacramento 061341 (October 21, 1968)

Inrreply refer to:
704
Sacramento 061341

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

October 21, 1968

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Duncan Miller : Oil and Gas
:
Decision Affirmed

Duncan Miller has appealed from a decision of our Sacramento land office dated August 26, 1968, which dismissed his protests against automatic termination of oil and gas lease Sacramento 061341 pursuant to Section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1964), for failure to pay the rental on or before the anniversary date of the lease and against making the subject land, the SE¼ section 2, T. 27 S., R. 28 E., M.D.M., California, available to new leasing pursuant to 43 CFR 3123.9.

The lease rental became due June 3, 1968, 1/ but it was not paid until June 21, 1968. In accordance with 43 CFR 3129.2 and 3123.9, the termination of lease Sacramento 061341 was noted on the land office records, the lands were posted for simultaneous filings, and offers were received. 2/

In his appeal, Miller appears to contend that the land office misinterpreted the law in his case and that he actually is entitled to pay the lease rental after the anniversary date of the lease and so have the former lease reinstated.

1/ The anniversary date of lease Sacramento 061341 is June 1, which fell on a Saturday in 1968. June 3, 1968, was the next day thereafter that the land office was open to the public. 43 CFR 1821.2-2(e).

2/ At the time of the attempted payment of the delinquent rental, Miller submitted a new lease offer, S 1688, which the land office rejected as not being in proper form for a simultaneous filing. 43 CFR 3123.9. Miller's appeal from the land office decision was dismissed by Bureau decision of October 17, 1968. Miller later submitted a drawing entry card lease offer, but it was received in the land office after the period for simultaneous filings, and so was not accepted.

Offer S 1712 was determined to be the successful drawee among the drawing entry card lease offers submitted for Parcel # 23, embracing the SE¼ section 2, T. 27 S., R. 28 E., M.D.M. It was submitted by U. S. Royalty Oil Corporation.

Section 31 of the Act, supra, provides that

> "upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law."

The Department has consistently held that an oil and gas lease is automatically terminated under Section 31 of the Mineral Leasing Act, as amended by the act of July 29, 1954, supra, when the rental is not paid in full on or before the due date. Duncan Miller, A-30067 (March 12, 1964); Duncan Miller, A-30213 (April 8, 1964); Duncan Miller, A-30546 (August 10, 1966); Duncan Miller, A-30566 (August 11, 1966).

As Miller did not pay timely the rental for oil and gas lease Sacramento 061341, the lease terminated automatically by operation of law. Having thus terminated, and the land office records being so noted, it was proper for the land office to post the land as being available for simultaneous oil and gas leasing pursuant to 43 CFR 3123.9. Miller's protest against the posting is without merit and properly was dismissed by the land office.

The decision appealed from is affirmed.

Duncan Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error. If an appeal is taken, the adverse party to be served is U. S. Royalty Oil Corporation, 117 West 9th Street, Room 815, Los Angeles, California 90015.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2
Dist. on page 3

DISTRIBUTION

Duncan Miller (Certified Mail)
U. S. Royalty Oil Corporation
Div L&M S&T (4)
Div L&M PM (2)
OPD
GS, Cons Div (3)
Gower Federal Service
Appeals List No. 1

Oil and Gas Leases: Applications -- Noncompetitive 3123

It is proper to reject a noncompetitive oil and gas lease offer not submitted on a Simultaneous Oil and Gas Entry Card where such offer is filed during the simultaneous filing period for a parcel of land listed among the tracts available to such simultaneous filing.

Duncan Miller, S 1688 (**February 17, 1970**)

BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1970 MAR 2 AM 10 00

In Reply Refer to:
142
S 1688

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D.C. 20240

February 17, 1970

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Duncan Miller : Oil and Gas

Decision Affirmed

Duncan Miller has appealed from a Sacramento land office decision dated August 1, 1968, which rejected his offer to lease for oil and gas, S 1688, filed June 21, 1968, for the SE¼ section 2, T. 27 S., R. 28 E., M.D.M., California, for the reason that on June 21, 1968, the subject land was available to oil and gas leasing only under the simultaneous filing procedures set forth in 43 CFR 3123.9, and Miller's offer, filed pursuant to 43 CFR 3123.1 and not under 43 CFR 3123.9, was deemed to be premature.

The record shows that the SE¼ section 2, T. 27 S., R. 28 E., had been included in noncompetitive oil and gas lease Sacramento 061341 which terminated June 3, 1968, pursuant to 30 U.S.C. § 188(b) (1964), for failure to pay the advance rental for the lease year commencing June 1, 1968. 1/ The land subsequently was posted as Parcel 23 in the list of lands available to simultaneous filing of oil and gas lease offers during the period from 10 a.m., June 17, to 10 a.m., June 24, 1968, under the procedures set forth in 43 CFR 3123.9. Such simultaneous filings were required to be made on Bureau Form 4-1664 (now 3120-21). Miller's offer to lease was made on Form 4-1158, and bears the notation "Based on Sac 061341 Preference Right." As the offer was not filed on the proper form to be included in the simultaneous filing procedure, and as the notice of lands available to leasing stated that if no offers under the simultaneous procedures were received within the stated filing period, the lands listed would be subject to oil and gas leasing after 10 a.m., June 24, 1968, the land office rejected Miller's offer as prematurely filed.

Miller's notice of appeal from the rejection of his offer S 1688 reads as follows:

1/ June 1, 1968, was a Saturday, a non-work day for the land office; June 3, 1968, a Monday, was the first official work day thereafter.

> The record shows that there was a request to the Land Office for information on payment of Oil & Gas Lease rentals, (which the lessee has paid generally well in advance to prevent inadvertent error.) Because of the loss of some records, the Land Office refused to furnish the information.
>
> Under the circumstances, the termination, by operation of law, must be interpreted from its legislative history. It was a law to prevent the lessee from being held accountable for rentals on the lease, after its expiration date.
>
> Hence, it cannot be held to preclude re-instatement of the lease, when failure to pay timely rental, was caused by the inadvertent error, supported by the Land Office's refusal under the lease contract to act reasonably and equitably toward the lessee.

The appeal does not clearly point to any error in the land office decision rejecting the offer to lease S 1688 for the reason stated therein: that the offer was prematurely filed. 2/ It seems that Miller is blaming the land office for his failure to pay rental timely on an earlier lease for the same lands which he had held, and he is requesting reinstatement of that other lease, or perhaps in the alternative, issuance of a new lease to him under some sort of preference right not defined.

The pertinent regulation, 43 CFR 3123.9, provides essentially that lands in cancelled, relinquished or expired oil and gas leases or in leases which terminated for failure to pay rental timely shall be available to the filing of new lease offers only after posting of a notice in the land office on the third Monday of the month, listing the parcels available to lease. Offers to lease must be on an approved form, "Simultaneous Oil and Gas Entry Card," and must identify the land applied for only by the Parcel Number shown on the posted list. If no offer is received for any parcel during the period provided in the notice, such lands will thereafter become subject to oil and gas leasing under the provisions set forth in 43 CFR Part 3123.

In accordance with the provisions of 43 CFR 3123.9, the notice of lands available for oil and gas filing posted by the Sacramento land office on June 17, 1968, stated:

> The following described lands formerly embraced in oil and gas leases which were canceled, relinquished, terminated or have expired will be subject to oil and gas leasing in

---

2/ Bureau decision of October 17, 1968, summarily dismissed this appeal, but the Department, in Duncan Miller, A-31081 (May 15, 1969), remanded the case, stating it was possible to draw from the appeal the reason why the appellant believed the decision was in error.

> accordance with the regulation 43 CFR 3123.9 at 10 a.m., on June 24, 1968. These lands are subject to simultaneous filings of lease offers from 10 a.m., June 17, 1968 to 10 a.m., June 24, 1968.
>
> Filings must be made on the "Simultaneous Oil and Gas Entry Card", Bureau Form 4-1664, and each offer must be accompanied by separate remittances covering the filing fee of $10.00 and the first year's advance rental at the rate of 50 cents per acre or fraction thereof and must otherwise conform with the requirements of the regulations in 43 CFR Part 3123. The remittance covering payment of advance rental must be made by cash, money order, certified check, bank draft or bank cashier's check. If no offers are received during the simultaneous filing period, the land will thereafter be subject to lease by the first qualified applicant.

Miller's offer, S 1688, made on Form 4-1158 and filed on June 21, 1968, did not conform to any part of the regulatory requirements so as to be considered to be an entry in the simultaneous filing procedures, and being filed prior to the date on which the land would become available to oil and gas lease offers other than those filed in the simultaneous procedure, it was prematurely filed for lands not available to oil and gas filings generally until June 24, 1968.

The validity of an oil and gas lease offer is determined as of the time the offer is first filed. It the lands are not then available to such oil and gas leasing, the offer is invalid and must be rejected. See Thor-Westcliffe Development, Inc., v. Udall, 314 F. 2d 257 (D.C. Cir. 1963); cert. denied 373 U.S. 951 (1963).

As Miller's offer S 1688 was filed on June 21, 1968, before the lands became available to that type of filing, and there is no authority to retain an oil and gas lease offer until the lands applied for become open to such filing, the land office properly rejected the offer S 1688. See J. G. Hatheway et al., 68 I.D. 48 (1961).

We now look at the cryptic notation on Miller's offer "Based on Sac 061341 Preference Right." Miller has given nothing to support his request for a preference right lease and we know of no statute or regulation conferring such a preference right on the offeror who files in circumstances such as those surrounding the filing of offer S 1688. It is true that the amendment to the Mineral Leasing Act by the Act of July 29, 1942, 30 U.S.C. 226b, gave the lessee, upon expiration of the initial term of a noncompetitive oil and gas lease issued pursuant to the provisions of the amendatory act of August 21, 1935, 49 Stat. 674,

a preference right to a new lease, but it is also a fact that this preference right provision was repealed by section 14 of the Act of August 8, 1946, 60 Stat. 958. Accordingly, it was correct for the land office to deny the claim of Miller to a preference right for his offer S 1688, based on his terminated lease Sacramento 061341.

Finally, Miller pleads for reinstatement of the earlier lease, Sacramento 061341, a matter completely alien to this case. We observe only that in response to Miller's appeal from denial of the reinstatement of the former lease Sacramento 061341, the Department, consistent with its holdings in a long series of similar appeals by Miller in like circumstances, held that where the rental for an oil and gas lease was not timely paid and the lease automatically terminated under section 31 of the Mineral Leasing Act, the land office properly noted the records and made the land available for leasing under the simultaneous filing procedures of 43 CFR 3123.9. The subsequent payment of the rental may not serve as a basis for reinstatement of the lease or give the lessee any rights under the terminated lease. Duncan Miller, A-31087 (February 4, 1970).

The decision appealed from is affirmed.

Duncan Miller has the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D.C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. The appellant must show wherein the decision appealed from is in error. If an appeal is taken, the adverse party to be served is U.S. Royalty Oil Corporation, Room 815, 117 West 9th Street, Los Angeles, California 90015.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION

Duncan Miller, Certified Mail
U.S. Royalty Oil Corporation
200
300 (6)
GS, Cons Div (6)
Gower Federal Service
Appeals List No. 1

Oil and Gas Leases: Generally 3120

Section 17 of the Mineral Leasing Act, as amended, confers no rights upon a lessee of a lease issued under that section to extract, mine or remove oil or gas from any of the minerals named in section 21 of the Act. Contractual rights of a lessee under section 17 of the Act are not impaired by this restriction, and a protest alleging such impairment is properly dismissed.

Duncan Miller, Riverside 02381 (February 19, 1969)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1969 MAR 5 AM 10 00

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

In reply refer to:
142
Riverside 02381

February 19, 1969

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Duncan Miller :
:
Oil and Gas

Decision Affirmed

Duncan Miller has appealed from a decision of our Riverside District and Land Office dated November 26, 1968, which denied his request for a new lease and for repayment of all rentals paid in connection with the terminated oil and gas lease Riverside 02381, and dismissed his protest against further leasing of the land included in the terminated lease.

In his appeal, Miller contends that his rights as lessee were never fully clarified, especially as to bitumus (sic) or tar sands. He also protests the requirement that a $5 filing fee be paid with an appeal.

The record shows that noncompetitive oil and gas lease Riverside 02381 was issued to Duncan Miller effective July 1, 1963. Rental of $240 was due on or before July 1, 1968, for the sixth lease year, for the 480 acres remaining in the lease, none of which had been determined to be within a known geologic structure of a producing oil or gas field. Section (d)(1)(a)(i) of the lease terms; 43 CFR 3125.1(a). The required rental was not paid so the lease Riverside 02381 terminated by operation of law on July 1, 1968. 30 U.S.C. § 188 (b) (1964). Any rights that Miller may have had to the oil and gas resources within the lands in the lease Riverside 02381 likewise terminated on July 1, 1968.

The assertion by Miller that rights to bituminous or tar sands were conferred on him by Section 1 of the lease terms has been made in similar fashion many times before. Each time the law has been explained to him. And each time it has been held that a noncompetitive oil and gas lease issued under section 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1964), such as lease Riverside 02381 was, confers no rights upon the lessee to extract oil or gas from deposits of bitumen, bituminous rock or sand, or tar sand within the leasehold, as such deposits are exploitable only under leases which may be issued pursuant to section 21 of the Act, 30 U.S.C. § 241 (1964). See Duncan Miller, 73 I.D. 211 (1966); Duncan Miller v. Udall, Civil No. C-167-66, D. Utah, dismissed with prejudice April 17, 1967; Duncan Miller, A-30566 (August 11, 1966); Duncan Miller, A-30587 (August 25, 1966); Duncan Miller, A-30712 (November 25, 1966).

The authority of the Secretary of the Interior to establish reasonable filing fees and service charges with respect to applications and other documents

relating to the public lands and their resources under his jurisdiction derives from the Public Land Administration Act of July 14, 1960, 43 U.S.C. §§ 1361 *et seq*. (1964). The Secretary has set a charge of $5 for each case involved in an appeal to the Director, Bureau of Land Management, from a land office action. 43 CFR 1842.4(b), 29 F.R. 4326 (March 31, 1964). Until this regulation is modified or deleted, we must consider it mandatory. See 43 CFR 1842.4(c). Duncan Miller, Utah 0123798 (November 19, 1968).

The land office decision appealed from is affirmed.

Duncan Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION:
Duncan Miller (Certified Mail)
300 (6)
200
GS, Cons Div (3)
Gower Federal Service
Appeals List No. 1

appeal to Sec A-31148
affirmed 3-2-70

Oil and Gas Leases: Termination 3129

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities terminates by operation of law if the rental due is not paid on or before the anniversary date of the lease.

Duncan Miller, LA 0169273 (March 14, 1969)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1969 MAR 27 AM 10 00

In reply refer to:
142
LA 0169273

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

March 14, 1969

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Duncan Miller : Oil and Gas
:

Decision Affirmed

Duncan Miller has appealed from a decision of our Riverside district and land office dated January 3, 1969, which notified him that his noncompetitive oil and gas lease LA 0169273 had terminated by operation of law for failure to pay rental due on or before November 1, 1968, the anniversary date of the lease. The decision allowed Miller to submit evidence that payment of the rental due on or before November 1, 1968, had timely been made.

On appeal, Miller contends that some inadvertent error occurred in connection with this lease. He submitted payment of $40 for the past due rental for the lease LA 0169273 at the time he filed his notice of appeal. In his statement of reasons for the appeal, Miller alleges he had been informed, in response to his telephoned inquiry, that the required rental for lease LA 0169273 had been paid before November 1, 1968.

The record shows that noncompetitive oil and gas lease LA 0169273 was issued effective November 1, 1963, for 80 acres. Rental of $40 was due on or before November 1, 1968, for the sixth lease year. There is no record that payment of this rental was made timely to the land office.

Section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1964), provides pertinently:

> Notwithstanding the provisions of this section, however, upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law: Provided, however, That when the time for payment falls upon any day in which the proper office for payment is not open, payment may be received the next official working day and shall be considered as timely made.

The Department has consistently held that failure to pay rental timely for an oil and gas lease results in automatic termination of the lease by operation of law. Duncan Miller, 73 I.D. 211 (1966); Duncan Miller, A-30546 (August 10, 1966); Duncan Miller, A-30566 (August 11, 1966); Duncan Miller, A-30122 (September 23, 1964); Duncan Miller, A-30213 (April 8, 1964).

No error in the land office action on this case has been shown. If, as the appellant asserts, he relied on misinformation from the land office with respect to the rental account under the lease, such action cannot serve to afford him any right which is not authorized by law. Cf. R. M. Harris, A-26215 (July 24, 1951).

The decision appealed from is affirmed.

Duncan Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION:
Duncan Miller (Certified Mail)
200
300 (6)
GS, Cons Div (3)
Gower Federal Service
Appeals List No. 1

Oil and Gas Leases: Rentals 3125

An oil and gas lease does not automatically terminate on its anniversary date for failure to pay rental on or before that date where the rent was paid before the anniversary date but, due to an oversight on the part of the land office, it was erroneously returned to the lessee and was not physically in the land office on the anniversary date.

Cecil H. Phillips, R 104 **(April 9, 1969)**

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1969 APR 21 AM 10 00

In reply refer to:
142
R 104

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

April 9, 1969

DECISION

Cecil H. Phillips :
:
Oil and Gas

Decision Vacated

Cecil H. Phillips has appealed from a decision of our Riverside district and land office dated February 11, 1969, which gave notice that his non-competitive oil and gas lease R 104 had terminated by operation of law for failure to pay timely the rental due for the lease year commencing February 1, 1969. The decision stated that the rental payment was received in the office on February 4, whereas the payment should have been received on or before February 3, 1969, the first official working day after the date on which the payment was due. (February 1, 1969, was a Saturday; February 2 was a Sunday.) 43 CFR 3125.1(d).

On appeal, Phillips contends that he sent timely payment of the required rental in the form of a cashier's check in the amount of $825.50 payable to himself but suitably endorsed by him to the order of the Bureau of Land Management, but that, by notice dated January 23, 1969, the land office returned this check to him by mail, stating it was negotiable by a party other than the Bureau of Land Management, and requested a new check payable to the Bureau of Land Management. He states he then obtained a new cashier's check payable to the Bureau of Land Management in the amount of $825.50, and mailed it from Long Beach, California, by registered mail on January 30, 1969. He contends that the land office failed to receive this check on or before February 3, 1969, because the land office did not inquire of the Postmaster, Riverside, California, to ascertain if there was any mail for the district and land office in the afternoon of February 3, 1969. He asserts that the land office personnel were not diligent in performance of their duties in this situation.

The record supports the contentions of the appellant. The district and land office did return to Phillips on January 23, 1969, a cashier's check in the amount of $825.50, endorsed by him to the order of the Bureau of Land Management. Phillips did mail, on January 30, 1969, by registered mail, a replacement check. The envelope is stamped as having been received in the Riverside, California, post office on January 31, 1969. There is no explanation why the Riverside district and land office did not receive the registered mail envelope from Phillips until February 4, 1969.

We must assume that the registered envelope from Phillips was available for pickup at the Riverside post office by land office personnel on

February 3, 1969, a situation equivalent to the letter being placed in the post office box designated for land office mail. In the case of Norma J. Rose, 75 I.D. 37 (1968), the Department held that the placing of a document by the post office in a mail box accessible to the land office during the hours in which the land office is open for the filing of documents constitutes delivery to and receipt by the land office. Accordingly, we conclude that the payment of rental by the appellant must be presumed to have been made on February 3, 1969, within the period prescribed for such payment.

In any event, it was error for the district and land office to return the original check endorsed by Phillips to the order of the Bureau of Land Management. Such endorsement made the check negotiable by this Bureau, and so should have been accepted in payment of the indicated rental. As the payment originally was tendered on or before January 23, 1969, for rental due for the lease year commencing February 1, 1969, the lease cannot be held to have terminated automatically on the anniversary date for failure to pay rental on or before that date because the payment erroneously was returned to the lessee and so was not physically in the land office on the anniversary date. See H. E. Stuckenhoff, Clyde E. Breen, 67 I.D. 285 (1960).

Accordingly, the decision of the Riverside district and land office, holding oil and gas lease R 104 to have terminated by operation of law, is vacated. The case file is returned to the district and land office for further action consistent herewith.

Newton Frishberg
Chief, Office of Appeals
and Hearings

DISTRIBUTION:
Clyde E. Phillips
200
300 (6)
GS, Cons Div (3)
Gower Federal Service
Appeals List No. 1

appeal to Sec A-31159
affirmed 3-2-70

Oil and Gas Leases: Termination 3129

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities terminates by operation of law if the rental due is not paid on or before the anniversary date of the lease.

Duncan Miller, LA 0171208 **(April 9, 1969)**

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1969 APR 21 AM 10 00

In reply refer to:
142
LA 0171208

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D.C. 20240

April 9, 1969

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Duncan Miller : Oil and Gas

Decision Affirmed

Duncan Miller has appealed from a decision of our Riverside district and land office dated December 10, 1968, which denied reinstatement to oil and gas lease LA 0171208 which had terminated by operation of law for failure to pay rental due on or before November 1, 1968, the anniversary date of the lease.

On appeal, Miller contends that some inadvertent error occurred in connection with this lease. In his statement of reasons for the appeal, Miller alleges that he had been informed, in response to his telephoned inquiry, that the required rental for the lease LA 0171208 had been paid prior to November 1, 1968.

The record shows that lease LA 0171208 was issued effective November 1, 1964, and on October 31, 1968, it embraced 200 acres. Rental of $100 was due on or before November 1, 1968, for the fifth lease year. There is no record that payment of this rental was made timely to the land office. Rather, the record shows that Miller tendered payment of the $100 rental on November 22, 1968, together with his "Request for Reinstatement, Protest and Appeals, Lease LA 0171208." The land office returned the payment as untimely and denied the request for reinstatement.

Section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1964), provides pertinently:

> Notwithstanding the provisions of this section, however, upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law: Provided, however, That when the time for payment falls upon any day in which the proper office for payment is not open, payment may be received the next official working day and shall be considered as timely made.

The Department has consistently held that failure to pay rental timely for an oil and gas lease results in automatic termination of the lease by operation of law. Duncan Miller, 73 I.D. 211 (1966); Duncan Miller, A-30546 (August 10, 1966); Duncan Miller, A-30566 (August 11, 1966); Duncan Miller, A-30122 (September 23, 1964); Duncan Miller, A-30213 (April 8, 1964).

No error in the land office action on this case has been shown. If, as the appellant asserts, he relied on misinformation from the land office with respect to the rental account under the subject lease, such action cannot serve to afford him any right which is not authorized by law. Cf. R. M. Harris, A026215 (July 24, 1951).

The decision appealed from is affirmed.

Duncan Miller has the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D.C. 20240. The filing fee will be $5. In taking an appeal, there must be strict compliance with the regulations. The appellant must show wherein the decision appealed from is in error.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION

Duncan Miller, Certified Mail
200
300 (6)
GS, Cons Div (3)
Gower Federal Service
Appeals List No. 1

Oil and Gas Leases: Termination 3129

A competitive oil and gas lease subject to the act of July 29, 1954, is properly held to have terminated automatically for failure to pay the annual rental on or before the anniversary date of the lease where there was no well capable of producing oil or gas in paying quantities on the leasehold, even though the lease term had been extended because of diligent drilling operations on the terminal date of the lease.

Sam Joseph, Riverside 03567 (May 6, 1969)

DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1969 MAY 16 AM 10 00

In reply refer to:
142
Riverside 03567

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

May 6, 1969

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Sam Joseph : Oil and Gas
:
Decision Affirmed

Mr. Sam Joseph has appealed from a decision of our Riverside District and Land Office dated November 21, 1968, which held that competitive oil and gas lease Riverside 03567, issued October 1, 1963, had terminated October 1, 1968, by operation of law for failure to pay rental due on or before the anniversary date of the lease, in the absence of a well on the leased lands capable of producing oil or gas in paying quantities. The decision recited that drilling operations being conducted on the expiration date of the lease, September 30, 1968, granted an automatic 2-year extension to the lease term, subject to payment of rental due on or before the anniversary date of the lease.

The appellant alleges discovery of oil was made on the leasehold of Riverside 03567 prior to September 30, 1968, and on that date the leasehold had a well capable of producing oil in paying quantities. He contends the lease 03567 did not require payment of rental on or before October 1, 1968, being on that date subject only to payment of minimum royalty on September 30, 1969, at the end of the sixth lease year, so that the land office erred in its holding that the lease Riverside 03567 terminated by operation of law for failure to pay rental timely.

The record shows that competitive oil and gas lease Riverside 03567 was issued October 1, 1963, for a period of five years and so long thereafter as oil or gas is produced in paying quantities. On September 30, 1968, diligent drilling operations on the leasehold were reported by the Geological Survey so the lease was entitled to a 2-year extension from October 1, 1968, pursuant to 30 U.S.C. § 226(e) (1964), provided rental was timely paid for the lease year commencing October 1, 1968, absent a well on the leasehold capable of producing oil or gas in paying quantities.

The issue before us involves only the question of whether there was, on or before October 1, 1968, a well on lease Riverside 03567 capable of producing oil or gas in paying quantities.

The appellant has stated merely that he had made a discovery of an oil and gas well capable of production prior to the expiration of the term of the lease, and that the lease was subject to minimum royalty on October 1, 1968.

The Director, Geological Survey, after review of the appeal, has given this information in his memorandum of April 16, 1969, to this office:

> By memorandum of October 21, 1968, H. L. Wolf, our District Engineer for the Taft District reported that "The lessee was diligently drilling at a depth of 2,974' on the termination date /September 30, 1968/." Our records indicate that only one well has been attempted under lease Riverside 03567 and that that well was completed on October 4, 1968, in perforations between 3,129' and 3,200' the total depth of the well.

The available information thus shows that the well in question was being diligently drilled at 2,974' on the terminal date of the lease, more than 150' above the top of the producing perforations in the completed well, and more than 225' above the bottom of the hole. The evidence indicates that the well was not completed until October 4, 1968. It is obvious, therefore, that the well on lease Riverside 03567 could not have been capable of producing oil or gas in paying quantities on October 1, 1968.

To continue the lease term beyond October 1, 1968, required payment of the 6th lease year annual rental on or before that date. As such payment was not made timely, lease Riverside 03567 terminated by operation of law. 30 U.S.C. § 188(b) (1964). There is no exemption from the provisions of the act of July 29, 1954, automatically terminating leases for failure to pay rental timely, of leases which contain valuable deposits of oil and gas but do not have a well capable of producing in paying quantities. Champlin Oil and Refining Company, et al., 66 I.D. 26 (1959). See also United Manufacturing Company, et al., 65 I.D. 106 (1958).

The act of July 29, 1954, 30 U.S.C. § 188(b) (1964), is self-operating, and, if the rental is not paid on or before the anniversary date, the lease simply terminates. The Secretary of the Interior has no authority under the circumstances to waive or suspend retroactively rental which has already become due on the lease so as to avoid the automatic termination of the lease because the rental was not paid when it became due. See United Manufacturing Company, supra. The rental must be received on or before the anniversary date of the lease. The fact that rental payment is offered and accepted on a lease that has terminated cannot continue or reinstate the lease. Champlin Oil and Refining Company, supra. And finally, the fact that a lessee may remain on the land after termination of the lease and obtain production is immaterial. Champlin Oil and Refining Company, supra. 1/

Accordingly, the decision appealed from is affirmed.

Mr. Sam Joseph has the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with

---

1/ See also Private Law 90-294, approved July 11, 1968, and Elwyn C. Hale, LC 063610 (August 9, 1968).

the Director, Bureau of Land Management, Washington, D.C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. The appellant must show wherein the decision appealed from is in error.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION:
Mr. Sam Joseph (Certified Mail)
200
300 (6)
GS, Cons Div (3)
Gower Federal Service
Appeals List No. 1

O&G

Oil and Gas Leases: Termination 3129

An oil and gas lease is automatically terminated by operation of Section 31 of the Mineral Leasing Act, as amended by the act of July 29, 1954, when the rental is not paid on or before the anniversary date of the lease and there is no well capable of producing oil or gas in paying quantities on the leasehold.

Subsequent tender of past due rental after termination of an oil and gas lease cannot operate to reinstate or to continue the lease.

Ralph J. Walters, R 731 JUN 10 1969

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1969 JUN 26 AM 10 00

In reply refer to:
142
R 731

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D.C. 20240

JUN 10 1969

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Ralph J. Winters : Oil and Gas

Decision Affirmed

Ralph J. Winters has appealed from a decision of our Riverside district and land office, dated March 19, 1969, which declared that his noncompetitive oil and gas lease R 731 had terminated automatically on March 1, 1969, for failure of the lessee timely to pay the advance rental for the lease year commencing March 1, 1969, due on or before March 3, 1969, the first working day following the anniversary of the lease. The decision recited that the termination was accomplished by operation of law and in accordance with section 2(e) of the lease terms, the advance rental payment having been received late, namely, on March 10, 1969.

The appellant acknowledges that the required rental was not submitted timely. He asserts, however, that the delay in payment was unintentional, that funds to prevent the lapse of the lease had been maintained in a local bank, and that the delay was occasioned by the fact that the lease instrument itself was not in his immediate possession and he was thus unaware of the exact date on which the payment was due.

Section 31 of the Mineral Leasing Act, as amended by the act of July 29, 1954, 30 U.S.C. § 188(b) (1964), provides that upon the failure of a lessee to pay rental on or before the anniversary date of the lease, the lease shall terminate automatically by operation of law. It further provides that when the time for payment falls on any day in which the office for payment is not open, payment may be made the next official working day. Appellant's payment, therefore, was required to be made not later than March 1, 1969.

Section 31(b) has consistently been interpreted to require that the rental payment be received on the due date to avoid automatic termination. The law is self-executing; if the rental payment is not received in the proper office of the Bureau of Land Management on the day the rental is due, the lease terminates automatically. Union Texas Petroleum, A-30970 (March 5, 1969). Further, the subsequent tender of the past due rental payment after termination of the lease cannot operate to continue or to reinstate the lease. Paradox Minerals, Inc., A-28000 (August 5, 1959). Section 31 of the Mineral Leasing

Act, as amended, does not authorize the reinstatement of leases which terminated after the effective date of the act of October 15, 1962, 30 U.S.C. § 188(c) (1964), for non-payment of rentals. Duncan Miller, A-30067 (March 12, 1964).

The district and land office decision appealed from is affirmed.

Ralph J. Walters has the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D.C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. The appellant must show wherein the decision appealed from is in error.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION

Ralph J. Walters (Certified Mail)
300 (6)
200
GS, Cons Div (3)
Gower Federal Service
Appeals List No. 1

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1969 JUN 26 AM 10 00

Oil and Gas Leases: Termination 3129

An oil and gas lease terminates automatically by operation of law under section 31 of the Mineral Leasing Act if the rental due for any lease year is not paid in full on or before the anniversary date of the lease and there is no well capable of producing oil or gas in paying quantities on the leasehold.

Absent statutory authority specifically permitting it, subsequent tender of rentals for a terminated lease will not revive that lease.

M. A. Riddle, James Gottlieb, Riverside 07561 **JUN 13 1969**

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1969 JUN 26 AM 10 00

In reply refer to:
142
Riverside 07561

JUN 13 1969

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D. C. 20240

DECISION

M. A. Riddle :
James Gottlieb :
:

Oil and Gas

Decision Affirmed

M. A. Riddle and James Gottlieb have appealed from a decision of our Riverside district and land office dated January 23, 1969, which stated that as the land office had no record of payment of rental for the second or third lease years for oil and gas lease Riverside 07561, the lease was deemed to have terminated automatically by operation of law and pursuant to section 2(e) of the lease terms, unless the lessees could present evidence that the rentals had been timely paid.

The appellants do not assert the lease rental was actually paid for either the second or third lease years, but argue that they purchased the lease in good faith only after their review of the land office serial register and the lease file indicated the lease was in good standing. They contend they should not now be penalized because of failure of the land office to maintain accurate lease accounting records. On May 12, 1969, they submitted a payment of $320 to the land office.

The record shows that oil and gas lease Riverside 07561 was issued noncompetitively to Ruth Mill and Karl F. Henning for 640 acres, effective June 1, 1966. Payment of the second lease year rental in the amount of $320 was due on or before June 1, 1967. The record does not show that such payment was timely made. By assignment approved December 1, 1968, record title to the lease became vested in M. A. Riddle and James Gottlieb, subject to a 5% overriding royalty reserved by the assignors.

Section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1964), provides that upon failure of a lessee to pay rental on or before the anniversary date of an oil and gas lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law. Under this section of the statutes, the lessee is solely responsible for making full payment of the lease rental due on or before the anniversary date of the lease. There is no statutory responsibility placed upon the Government or on any of its employees specifically to notify the lessee that rental is due and payable for any lease year, although it is a general practice of this Bureau to send a courtesy notice to alert each lessee of an upcoming rental date. That such a notice may not have been sent in connection with the second lease year rental for lease Riverside 07561 is immaterial to this appeal.

As above stated, the record does not show that any payment of the second lease year's rental was made on or before June 1, 1967. Such failure to make the required rental payment timely resulted in automatic termination of the lease by operation of law, 30 U.S.C. § 188(b)(1964). An oil and gas lease is automatically terminated under section 31 of the Mineral Leasing Act, as amended, when rental payment for the second lease year is not received on or before the anniversary date even though timely mailed, or if payment is timely received, it is deficient by a slight amount. See Union Texas Petroleum, A-30970 (March 5, 1969); Duncan Miller, A-30966 (October 29, 1968); Billy Mathis et al., A-30512 (July 6, 1966); Cities Service Oil Company, A-30498 (April 21, 1966).

The Secretary of the Interior is without authority to grant relief administratively from the effect of the automatic lease termination provisions of section 31 of the Mineral Leasing Act, as amended, where the lease has terminated for failure to pay the rental, even though such failure to pay might be due, in part, to lack of a billing notice from the land office. Cf. Cities Service Oil Company, supra. Because of the lack of authority in the Secretary of the Interior to grant relief in situations such as here present, submission of rental for the second lease year after the lease has terminated by operation of law cannot revive the lease.

It is unfortunate that the land office records did not reflect the termination of lease Riverside 07561 before the assignment to Riddle and Gottlieb was filed for approval, and that the assignment was given approval by the land office long after the lease had actually terminated. However, the point is firmly established that the Government is not bound by errors of its agents for no rights not sanctioned by law may be obtained against the Government as a result of incorrect interpretation of the records by an employee of a land office. See Arnold H. Echola, A-30831 (March 16, 1967). When the lessees failed to pay the rental due on or before June 1, 1967, for the lease, the lease Riverside 07561 terminated automatically by operation of law, and any action or notice thereafter by the land office indicating that the lease was still in existence was without authority and incorrect.

Accordingly, the decision appealed from is affirmed.

M. A. Riddle and James Gottlieb have the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. The appellants must show wherein the decision appealed from is in error.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

Dist. on page 3

DISTRIBUTION:
Mr. Ellis E. Patterson, Attorney for Appellants (Certified Mail)
M. A. Riddle and James Gottlieb
Ruth Mill and Karl J. Henning
200
300 (6)
GS, Cons Div
Gower Federal Service
Appeals List No. 1

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1969 JUL 26 AM 10 00

Oil and Gas Leases: Applications - Noncompetitive 3123.2

It is proper to reject a drawing entry card lease offer filed by a corporate entity where the card is not accompanied by evidence of the qualification of the offeror to receive the oil and gas lease sought or by evidence of authority of the person signing the offer in behalf of the corporate offeror, nor by a reference to a serial number of a record in which the showing previously has been made.

Pacific Oil and Gas Development Corporation, S 2528 (June 16, 1969)

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1969 JUN 26 AM 10 00

In reply refer to:
142
S 2528

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D.C. 20240

June 16, 1969

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Pacific Oil and Gas Development Corporation	:	Oil and Gas

Decision Affirmed

Pacific Oil and Gas Development Corporation has appealed from a decision of our Sacramento land office dated April 25, 1969, which rejected its drawing entry card lease offer S 2528 for the reason that the offeror had not complied with the regulation 43 CFR 3123.2(g) which requires a corporate offeror to submit a statement of its qualification to hold oil and gas leases and of authority for the person signing the offer with the offer or to make reference to a serial number wherein the material previously has been filed.

The appellant does not contend the land office decision is incorrect. It has merely furnished a serial number reference wherein its corporate qualifications have been filed (Wyoming 011355) and asserted that failure to comply with the cited regulation was inadvertent because of confusion attendant upon its moving to new office space.

The drawing entry card lease offer (Form 3120-21 April 1968) used by the appellant has this caveat on its reverse side: "NOTE: Compliance must be made with the provisions of 43 CFR 3123.2."

In pertinent part, this regulation provides:

> Each offer, when first filed, shall be accompanied by:
>
> * * *
>
> (d)(1) If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney in fact or agent and the offeror stating whether or not there is any agreement between them or with any other person, either oral or written, by which the attorney in fact or agent or such other person has received or is to receive any interest in the lease when issued, including

> royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding. * * * The statement by the principal (offeror) may be filed within 15 days after the filing of the offer. This requirement does not apply in cases in which an attorney in fact or agent is * * * an officer of a corporation and has an interest in the offer or the lease to be issued solely by reason of the fact that he is * * * a stockholder in the corporation.
>
> * * *
>
> (g) If the offeror is a corporation, the offer must be accompanied by a statement showing (1) the State in which it is incorporated, (2) that it is authorized to hold oil and gas leases and that the officer executing the lease is authorized to act on behalf of the corporation in such matters, (3) the percentage of voting stock and of all stock owned by aliens or those having addresses outside of the United States, and (4) the names and addresses of the stockholders holding more than 10 percent of the stock of the corporation. * * * A separate statement from each stockholder owning or controlling more than 10 percent of the stock of the corporation setting forth his citizenship and holdings must also be furnished. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted.

Examination of the drawing entry card filed by the appellant discloses that it was for Parcel No. 6, California. The card bears the signature of Elizabeth Koorsones for Pacific Oil and Gas Development Corporation, and is dated March 20, 1969. There is no indication that the showing as to corporate qualifications nor the authority of the signer to act for the corporation accompanied the drawing entry card, nor is there any reference on the card to a serial number of a record wherein the required statements might have been filed earlier (and the appellant has not contended that the required information was tendered with the card).

The cited regulations are mandatory, not discretionary. Failure to comply with the requirements to show the qualification of a corporate offeror and the authority of the person signing on behalf of the corporation are not listed among the curable defects in lease offers set out in 43 CFR 3123.4. The land office correctly rejected the drawing entry card lease offer of Pacific Oil and Development Corporation for failure to comply with the cited regulations.

Submission of the serial number of the file in which the corporate qualifications of Pacific Oil and Gas Development Corporation may be found after rejection of the drawing entry card cannot change the mandatory requirement of the regulation that the corporate qualification must be shown at the time of filing of the offer. Further, no showing has been made of the authority of Elizabeth Koorsones to sign for and in behalf of Pacific Oil.

The decision appealed from is affirmed.

Pacific Oil and Gas Development Corporation has the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D.C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. The appellant must show wherein the decision appealed from is in error.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION

Pacific Oil and Gas Development Corporation (Certified Mail)
200
300 (6)
GS, Cons Div (3)
Gower Federal Service
Appeals List No. 1

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1969 JUN 26 AM 10 00

Oil and Gas Leases: Generally 3100

It is proper to dismiss a protest by the lessee against the issuance of an oil and gas lease including the standard stipulations for lands under jurisdiction of the Department of Agriculture where the lessee complains only that he was not given opportunity to review the standard stipulations before the lease issued.

Duncan Miller, Riverside 06971 (June 22, 1970)

In reply refer to:
142
Riverside 06971

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

June 22, 1970

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas

Decision Affirmed

Duncan Miller has appealed from a decision of our Riverside district and land office dated March 20, 1970, which dismissed his protest against issuance of noncompetitive oil and gas lease Riverside 06971, effective March 1, 1969, and declared that the said lease Riverside 06971 had terminated March 2, 1970, by operation of law for failure to pay timely the rental for the second lease year on or before that date, there being no well on the leasehold capable of producing oil or gas in paying quantities. Miller had protested the lease issuance on the ground that he had not been called upon to consent to stipulations for lands under jurisdiction of the U. S. Department of Agriculture prior to issuance of the lease.

The appeal reiterates the protest by Miller that he was not allowed to consider the stipulations prior to lease issuance, and he asks that the lease issuance be rescinded.

Miller's offer to lease Riverside 06971 sought an oil and gas lease on some 1,440 acres in T. 6 N., Rs. 19, 20 W., S.B.M., California. Lease Riverside 06971 was issued, effective March 1, 1969, for 561.96 acres in sections 28, 29, 30, T. 6 N., R. 19 W., within the Los Padres National Forest. As the Forest Service, U. S. Department of Agriculture, had not objected to issuance of the requested oil and gas lease nor requested that the lease be made subject to special stipulations, the lease was issued subject only to the stipulations set forth in Form 3103-2, Stipulations for land under the jurisdiction of the Department of Agriculture. The pertinent regulation, 43 CFR 3109.4-2 (formerly designated as 3103.2 and 191.6), provides that offerors for noncompetitive oil and gas leases for lands, the surface of which is under jurisdiction of the Department of Agriculture, will be required to consent to inclusion of stipulations on a form approved by the Director, Bureau of Land Management.

The lease offer form used by Miller, Form 4-1158, Ninth Edition, August 1961, provides at Item 5(c) that the offeror accepts as a part of this lease, to the extent applicable, the stipulations provided for in 43 CFR 191.6. Accordingly, execution of the offer to lease was acquiescence and consent by Miller that any lease issued in response to the offer Riverside 06971 will be subject to the standard stipulations for lands under jurisdiction of the Department of Agriculture, if any such lands are included in the leased area. It is not necessary that Miller be called upon to sign such standard stipulations prior to issuance of a lease to which they are attached. The land office handled offer Riverside 06971 and issued lease Riverside 06971 in a manner consistent with Departmental procedures. The lease was not erroneously issued, so there is no reason to rescind the issuance thereof, and which, as the land office decision stated, terminated March 2, 1970.

Dismissal of Miller's protest was correct and that action is affirmed.

Duncan Miller has the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. The appellant must show wherein the decision appealed from is in error.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION

Duncan Miller (Certified)
200
300 (6)
GS, Cons Div (3)
Gower Federal Service
Appeals List No. 1

Mineral Leasing Act for Acquired Lands: Lands Subject to 3211

Lands acquired for the Point Conception Lighthouse Reservation under the administration of the Bureau of Lighthouses, and subsequently transferred to administration by the U.S. Coast Guard, are not precluded from leasing under the Mineral Leasing Act for Acquired Lands for the reason of being set apart for military or naval purposes.

Union Oil Company of California, Riverside 06089 (July 1, 1969)

In Reply Refer to:
142
Riverside 06089

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D.C. 20240

July 1, 1969

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Union Oil Company of California : Oil and Gas
Acquired Lands

Decision Vacated
Case Remanded

Union Oil Company of California has appealed from a decision of our Riverside district and land office dated April 17, 1967, which rejected its noncompetitive offer to lease for oil and gas 30.1 acres within the Point Conception Lighthouse Reservation, T. 4 N., R. 34 W., S.B.M., California, pursuant to the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 351 et seq. (1964), Riverside 06089. The decision stated the reason for the rejection was that the Commandant, United States Coast Guard, the agency having jurisdiction over the land, disapproved the application since disposal action involving a major portion of the property is contemplated.

Subsequently and after notice of appeal had been filed, the Coast Guard, by letter of May 17, 1967, advised that the subject property will be retained, with the Department of the Air Force being licensed to use a large parcel thereof.

The appellant contends that the determination by the Coast Guard to retain the subject land eliminated the stated reason for the rejection of its offer and that it is willing to lease the subject lands under conditions which would assure that oil and gas operations would not interfere with the Government's use of the land, and to execute stipulations which would guarantee such freedom from interference.

The Commandant, Coast Guard, by letter of August 16, 1968, to this office, stated that earlier consideration of oil and gas lease applications for land within the Point Conception Lighthouse Reservation had elicited a determination by the Chief Counsel, Coast Guard, concurred in by the then Solicitor for the Department of the Interior, that lands acquired for use by the Coast Guard in maintaining the lighthouse facility are set apart for military purposes and so are excluded from leasing under the Mineral

Leasing Act for Acquired Lands, supra. The Commandant then advised that if the Solicitor, Department of the Interior, now determines the lands acquired for Point Conception Lighthouse Reservation may properly be leased under the Mineral Leasing Act for Acquired Lands, supra, the Coast Guard and the Air Force will acquiesce to issuance of such oil and gas leases for the Point Conception Lighthouse Reservation lands subject to these conditions:

a. No right of surface entry is granted; all operations will be by slant drilling from nearby lands controlled by the oil company.

b. Drill hole transit of subject property is 500 feet or more below the surface to eliminate vibration to surface instrumentation.

c. Company-operated radio transmitters or Shoran equipment shall not interfere with assigned Air Force Western Test Range Frequencies or with established or future Coast Guard aids to navigation.

d. The oil company equipment such as diesel engines and generators will be suppressed to eliminate electromagnetic interference.

e. The company operations shall in no way impede or interfere with the present or future use of the property by any agency of the U.S. Government.

f. Prior to any company operation, all movements are to be cleared with the Commander, Air Force Western Test Range, Vandenberg Air Force Base, California, and the Commander, Eleventh Coast Guard District, Long Beach, California.

Following his reexamination of the applicability of the Mineral Leasing Act for Acquired Lands, supra, to lands administered by the Coast Guard as a lighthouse station, the Solicitor, Department of the Interior, in his memorandum to this office dated June 25, 1969, has reported that nothing in the statute which provided for acquisition of lands for the Point Conception Lighthouse Reservation shows a military purpose nor did any subsequent action prior to transfer of all lands under control of the Bureau of Lighthouses to the Coast Guard. If the land in the Point Conception Lighthouse Reservation has acquired a military character, it has come about only as a result of its administration by the Coast Guard. The Coast Guard is defined by statute as a military service at all times, 14 U.S.C. § 1 (1964), so there is a presumption that any land administered by the Coast Guard is set aside for military purposes. However, the Commandant, Coast Guard, has advised that the Point Conception Lighthouse serves essentially a civilian purpose with incidental military impact. Within the responsibility given to the Secretary of the Interior by section 3 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 352 (1964), the Solicitor concludes, in his opinion, that the Point Conception

Lighthouse Reservation is not on land set apart for military purposes, and the land is subject to lease under the Mineral Leasing Act for Acquired Lands, supra.

Accordingly, the decision appealed from is vacated. The case is remanded to the Riverside district and land office for further appropriate action, with the admonition that present consent of the Commandant, Coast Guard, must be obtained before the requested oil and gas lease may be issued, and that if such consent is given, full consideration of the impact of the oil and gas lease upon the public interest must be made before the lease may be issued.

Newton Frishberg

Chief, Office of Appeals
and Hearings

DISTRIBUTION

Herbert S. Harry, Attorney, Union Oil Company of California
Commandant (FS-6), U.S. Coast Guard, Washington, D.C.
Commander (f) 11th Cost Guard District, Long Beach, California
200
300 (6)
GS, Cons Div (3)
Gower Federal Service
Appeals List No. 1

appeal to Sec

O&G

Oil and Gas Leases: First Qualified Applicant 3123

A noncompetitive offer to lease is properly rejected where the land sought has been included in an oil and gas lease issued in response to a proper application filed earlier in time.

Duncan Miller, Riverside 06122 (July 11, 1969)

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1969 JUL 24 AM 10 00

In Reply Refer to:
142
Riverside 06122

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D.C. 20240

July 11, 1969

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Duncan Miller : Oil and Gas

Decision Affirmed

Duncan Miller has appealed from a decision of our Riverside district and land office dated January 28, 1969, which rejected his noncompetitive oil and gas lease offer Riverside 06122, filed December 24, 1964, for the reason that all the land therein described is now included in oil and gas lease LA 0171271, based on an offer to lease filed October 9, 1961.

Miller contends the decision is erroneous because it fails to take into account the full circumstances involved and the history of the case which, he insinuates, shows a denial of his statutory rights as the first qualified applicant to lease these lands.

There is nothing in the record to show that Miller is the first qualified applicant for the subject lands, nor that he has been denied any statutory rights in this matter. Lease LA 0171271 was issued effective June 1, 1965, in response to a proper offer submitted October 9, 1961, several years prior to the submission by Miller of his offer Riverside 06122 on December 24, 1964. The record shows that lease LA 0171271 was regularly issued in conformance with statutory mandate to lease the land to the first person who submits a proper application for it. 30 U.S.C. § 226 (1964).

Perhaps the vague language in Miller's appeal adverts to an earlier offer which he made for some of the subject land, LA 0170834. The record discloses that this offer was rejected as not being a proper application for failure to comply with the mandatory requirements of the regulations in 43 CFR 192.42(d) (now 43 CFR 3123.1(d)). The rejection was sustained by the Department on appeal, Duncan Miller, A-29521 (August 29, 1963). In subsequent litigation styled as Miller v. Udall, Civil 2413-63 in the United States District Court for the District of Columbia, the decision of the Department was upheld. Thus there is no basis whereby Miller can claim to be the first qualified offeror who submitted a proper application for the subject land. And as Miller is not the first qualified offeror he has not been denied any statutory rights in the present rejection of his junior offer.

The decision appealed from is affirmed.

Duncan Miller has the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D.C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. The appellant must show wherein the decision appealed from is in error.

In the event an appeal is taken, the adverse party to be served is James P. Witmer, 704 South Spring Street, Room 505, Los Angeles, California 90014.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION

Duncan Miller (Certified Mail)
James P. Witmer
200
300 (6)
GS, Cons Div (3)
Gower Federal Service
Appeals List No. 1

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1969 JUL 24 AM 10 00

Mineral Leasing Act for Acquired Lands: Lease Requirements 3212

Where the United States owns a 75 percent interest in the oil and gas deposits in certain acquired lands and the successful drawees for a lease of this interest have shown on appeal that they have no operating rights in the remaining fractional mineral interest in the lands applied for, the lease offer is considered acceptable, all else being regular.

William G. Gustafson, et al., S 2668 (August 6, 1969)

In reply refer to:
142
S 2668

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

August 6, 1969

DECISION

William G. Gustafson :
George Patsko :
Robert M. Skamnes :

Oil and Gas

Case Remanded

Messrs. William G. Gustafson, George Patsko, and Robert M. Skamnes, successful drawees for a lease of the 75 percent interest of the United States in the oil and gas deposits in certain acquired lands in California, offered as Parcel 10 in the May 1969 simultaneous filing procedure, have appealed from the decision of our Sacramento land office dated June 3, 1969, which rejected their lease offer for the reason that they did not accompany the offer with a statement of their present ownership of operating rights in the fractional mineral interest not owned by the United States. 43 CFR 3212.3(d).

The appellants state they have no present interest in the fractional mineral interest not owned by the United States in the lands applied for, but contend they are qualified to receive a lease on the mineral interest owned by the United States, which, being greater than 50 percent, is in the public interest to lease.

The cited regulation provides pertinently:

> An offer for a fractional present interest noncompetitive lease must be executed on a form approved by the Director and it must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such results will be rejected.

In many similar cases before the Bureau on appeal it has been held, under the cited regulation, that where the United States owns 50 percent or greater present mineral interest in the oil and gas deposits in acquired lands, a qualified offeror may receive a lease of such

interest even though the offeror does not own any operating rights in the remaining fractional mineral interest in the lands. See Robert J. Benford, BLM-A 079840 (West Virginia) (March 23, 1965); Pubco Petroleum Corporation, Montana 066789 (North Dakota) (February 16, 1965); Jack J. Grynberg, BLM-A 080425 (Mississippi) (June 16, 1965); Andrea R. Greyber, ES 2988 (Mississippi) (January 17, 1968).

Accordingly, as in these previous cases, the offer of Messrs. Gustafson, Patsko and Skamnes is considered acceptable, and a lease may be issued pursuant thereto, all else being regular.

The case is remanded to the land office, through the State Director for California, for appropriate action consistent herewith.

Newton Frishberg

Chief, Office of Appeals
and Hearings

DISTRIBUTION:
William G. Gustafson
George Patsko
Robert M. Skamnes
200
300 (6)
GS, Cons Div (3)
Gower Federal Service
Appeals List No. 1

Oil and Gas Leases: Applications—Noncompetitive 3123

An oil and gas lease offer is properly rejected where it is filed in the name of a corporation and it is not accompanied by the statement as to corporate qualifications required by 43 CFR 3123.2(g), nor, in the alternative, by a reference to the serial number of a case record in which showings regarding corporate qualifications had been filed, as permitted by that regulation.

Sudmeier Enterprises Incorporated, R 2376, etc. (November 18, 1969)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1969 NOV 28 AM 10 00

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

In reply refer to:
142
R 2376
R 2408

November 18, 1969

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

:
Sudmeier Enterprises Incorporated : Oil and Gas
:

Decision Affirmed

Sudmeier Enterprises Incorporated has appealed from decisions of the Riverside district and land office dated July 16 and 30, 1969, which rejected its offers to lease for oil and gas R 2376 and R 2408, filed on June 25 and July 15, 1969, respectively. The stated reason for rejection in each instance was that the offer is defective in that the corporate qualification papers did not accompany the offer and no reference was furnished to the serial number of the record where such evidence was previously filed, as provided in regulation 43 CFR 3123.2(g).

The appellant admits that it failed to make reference to such material which it had previously furnished with its offer R 2338, filed on June 10, 1969. It requests reconsideration of the offers and that the leases be granted.

The cited regulation provides pertinently:

> § 3123.2 What should accompany offer.
> Each offer, when first filed, shall be accompanied by:
>
> * * * * * *
>
> (g) If the offeror is a corporation, the offer must be accompanied by a statement showing (1) the State in which it is incorporated, (2) that it is authorized to hold oil and gas leases and that the officer executing the lease is authorized to act on behalf of the corporation in such matters, (3) the percentage of voting stock and of all the stock owned by aliens or those having addresses outside of the United States, and (4) the names and addresses of the stockholders holding more than 10 percent of the stock of the corporation. * * * A separate statement from each stockholder owning or controlling more than 10 percent of the stock of the corporation setting forth his citizenship and holdings (under the Mineral Leasing Act) must also be furnished. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted.

Except for certain specified curable defects not material here, an offer which is not filed in accordance with the regulations will be rejected and will afford the offeror no priority. 43 CFR 3123.3(b).

The Department has consistently considered that the language "must be accompanied by" in its regulations is mandatory. See Richard C. Cook et al., 73 I.D. 145 (1966); George N. Keyston, Jr., Ltd., 70 I.D. 156 (1963). With regard to corporate qualifications, the regulation, hereinbefore quoted, expressly provides an alternative to submitting with the offer the evidence required by permitting showings by referral to the serial number of a case record where such showings had been previously filed. The subject offers were not accompanied by the required evidence nor did they contain any reference to the serial number of a case record in which such material had been filed. In the circumstances, the offers were not filed in accordance with the regulations and were properly rejected.

Accordingly, the decisions appealed from are affirmed.

Sudemier Enterprises Incorporated has the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D.C. 20240. The filing fee will be computed on the basis of $5 for each lease offer included in the appeal. If the appeal covers both lease offers adversely affected by this decision the total filing fee will be $10. In taking an appeal there must be strict compliance with the regulations. The appellant must show wherein the decision appealed from is in error.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION:
Sudmeier Enterprises Incorporated (Certified Mail)
200
300 (6)
GS, Cons. Div. (6)
Gower Federal Service
Appeals List No. 1

Oil and Gas Leases: Applications - Noncompetitive Simultaneous Filings
3123.9

It is proper to reject a drawing entry card oil and gas lease offer without priority when the offer is not accompanied by the required statements of interest of the parties and the showing of qualification of the additional party named, and where such showing is not filed within the 15-day period allowed by the regulation, 43 CFR 3123.2(c)(3).

George A. Betz, R 2489 (June 11, 1970)

BUREAU [illegible] OF INTERIOR
SACRAMENTO [illegible] AND MANAGEMENT
LAND OFFICE
1970 JUN 18 AM 10 00

In reply refer to:
142
R 2489

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D.C. 20240

June 11, 1970

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

:
George A. Betz : Oil and Gas
:

Decision Affirmed

George A. Betz has appealed from a decision of the Riverside district and land office dated October 24, 1969, which rejected his oil and gas drawing entry card lease offer filed on September 22, 1969, for Parcel 117-2. The offer was rejected for noncompliance with regulation 43 CFR 3123.2(c)(3) in that the offer stated that Joseph J. Enterlin was a party in interest in the offer and lease if issued, but the offer was not accompanied by nor was there filed within 15 days after filing of the offer a separate statement signed by the interested party and the offeror, setting for the nature and extent of the interest of each in the offer, the nature of the agreement between them, if oral, or a copy of such agreement, if written, and evidence of the qualifications of Mr. Enterlin to take and hold the lease interest sought.

The appellant contends "we were not advised in any manner that we were the successful bidders of the above parcel, and therefore, did not have the opportunity to submit a statement of agreement between George A. Betz and Joseph J. Enterlin along with proof of qualification." Attached to the appeal is a joint statement signed by Betz and Enterlin and documents apparently to establish the qualification of Enterlin.

The cited regulation provides pertinently:

> Each offer, when first filed, shall be accompanied by:
>
> * * * *
>
> (3) a signed statement by the offeror that he is the sole party in interest in the offer and the lease, if issued; if not he shall set forth the names of the other interested parties. If there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. All interested parties must furnish evidence

> of their qualifications to hold such lease interest. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer.

Further, the appellant was put on notice as to these requirements by the following note which appears on the reverse side of the drawing entry card below the space provided for the listing of other interested parties: "NOTE: Compliance must be made with the provisions of 43 CFR 3123.2."

The regulations at 43 CFR 3123.3(b) provide that except as provided in § 3123.4, offers not filed in accordance with regulations will be rejected and will afford the offeror no priority. Failure to submit the separate statement of interest is not within the listed exceptions.

Where an offer consisting of an entry card filed under the procedures governing simultaneous filings of oil and gas lease offers contained in 43 CFR 3123.9 states that there are other parties in interest, the offer becomes defective if the statements required by 43 CFR 3123.2(c)(3) and the instructions on the entry card are not filed with the offer or within 15 days thereafter. Paul Harvey et al., A-30552 (June 24, 1966), affirmed in Harvey v. Udall, 384 F. 2d 883 (10th Cir. 1967), rehearing denied December 14, 1967.

It is clear from the regulation 43 CFR 3123.9(c)(3) that an offeror acquires no vested right to a lease merely because his offer is drawn in the simultaneous drawing procedure. The drawing only establishes which offer will be considered; it does not constitute a determination that the offer so drawn is valid or that any defects in such offer may be waived. George N. Keyston, Jr., Ltd., 70 I.D. 156 (1963).

Furnishing of the required information subsequent to the time allowed cannot revive the offer since the regulations pertaining to drawings require that the parcel be included in a new simultaneous drawing procedure where the successful drawee is unqualified to receive the lease. 43 CFR 3123.9(c). See Stephen J. Hlincik et al., A-30652 (January 18, 1967).

The decision appealed from is affirmed.

George A. Betz has the right of appeal to the Secretary of the Interior in accordance with the regulations in CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D.C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. The appellant must show wherein the decision appealed from is in error.

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION
Mr. George A. Betz
Mr. Joseph J. Enterlin
300 (6)
200
G.S., Cons. Div. (3)
Gower Federal Service
Appeals List No. 1